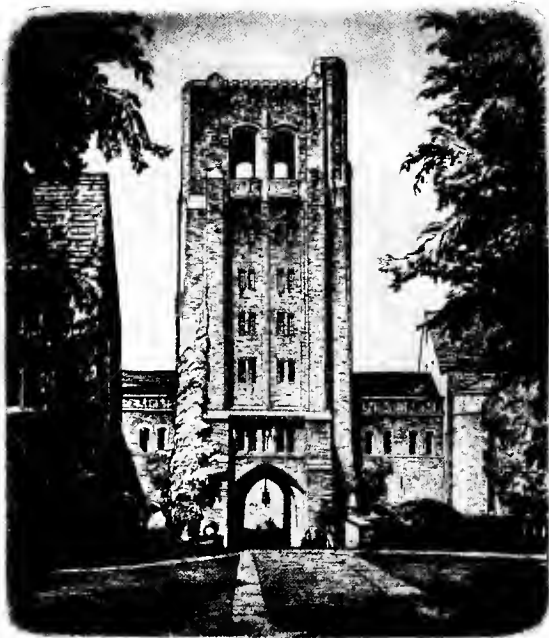


# RESPONSIBILITY IN LAW

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# RESPONSIBILITY IN LAW





# RESPONSIBILITY IN LAW

AN INQUIRY INTO THE MEANING OF  
LAW AND OF RESPONSIBILITY

BY

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OF LINCOLN'S INN AND THE MIDDLE TEMPLE  
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## PREFACE

IN the elaboration of this Treatise, the endeavour has been made to keep it within very modest limits, to state the arguments as concisely as possible, and to refer to well-known works either by way of illustration of the line of thought or of support to the views that are intended to be expressed. By these means it is hoped that the tediousness of a dry subject may be lessened to the reader, and at the same time that, by means of the many references in footnotes, it may be easy to follow out the processes of reasoning by which some of the conclusions have been arrived at.

To find an intelligible basis of Responsibility, beyond the mere legal conceptions of offence and punishment, it was necessary to proceed some way into the regions of mental science and philosophy. In doing so, the author hopes he may crave indulgence from critics, as he makes no pretensions to any special knowledge in systems of philosophy—if he has arrived at true conclusions, perhaps the fact of his not having followed the beaten track may be overlooked.

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He wishes to return grateful acknowledgments to his friend Dr. Radford Potts of Oxford for encouragement and valuable criticism during the progress of his work, and to his kinsman Professor Rankine of Edinburgh for assistance in selecting cases from Scots Law.

The first seven chapters, to which some alterations and additions have since been made, have already appeared in the pages of the *Law Magazine and Review*.

OXFORD,

*September 1, 1908.*

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cannot be reached but through true religion—leading up through human Knowledge to the Word of God ; to deal with Responsibility on any other basis must prove inadequate : each man has to form for himself, or receive from others, his conception of religious truth ; and the only conclusive test of religious truth open to our finite intelligence is that which we apply to any ordinary branch of Knowledge : to reach a satisfactory foundation for Responsibility, we must find a psychological basis in the natural side of the constitution of man as commonly presented to us for analysis and a philosophical basis in the spiritual part of man which a more complete psychology of the human mind will supply. The attempt has been made to account for responsibility and justify the infliction of punishment on quite other grounds than these. Responsibility, as commonly understood, goes no further than the contemplation of liability to punishment under some moral or legal code ; in this view, the basis of Responsibility rests on a sanction no higher than the law of Nature, the law of retaliation : the law of England has already travelled beyond this view ; and it will be the object of this treatise to show in what farther direction the solution of the problem of Responsibility lies. Responsibility, in a legal sense, may be stated to be that condition in which a man is considered capable of acting up to the standard of what is required of him, either in a special capacity or in a general way ; but the notion of responsibility cannot be limited in this way without grave danger to the State : there is responsibility by the State as well as to the State ; and this responsibility the State may shift for a time on to the individual but cannot get rid of. This conception of law, as the realisation of an overmastering authority, universal uniform continuous, is vital ; no theory of Responsibility applicable to social and political conditions is possible apart from it : law cannot be broken but by catastrophe ; the breach is blotted out ; there must be reparation if law is to continue ; for every breach of law there must be atonement. Responsibility

defined, as that state of a sentient and intelligent being in which he has the capacity of acting according to law; in proceeding to inquire into the nature of this capacity, we shall be led into an examination of the constitution of mind; and thus, it will be necessary to find a psychological basis for responsibility. The growth of mental experience by way of percepts and suggested images, showing that under the law of nature the human mind is not wholly self-determining: dualism of body and soul, how are we to find the means of unification? This means must spring from some source other than the body and soul which it affects to unify—in spirit, in the unifying principle of self-consciousness: thus we shall have the mind capable of being directed to an end or ideal, and enabled to rise to the knowledge of right thinking right feeling and right acting—and in this Knowledge we have the philosophic basis for Responsibility. Inquiry into the nature of Knowledge, and how we come to possess that Knowledge and power of control which raises us to a position of moral and consequently of legal responsibility—premising that the natural faculties of the mind give us no higher warrant of responsibility than that of following natural instincts and inclinations, and that we have to seek in the higher faculties of the mind as centered in the spirit of Man for the self-conscious unity in which Responsibility has its seat .. .. 5

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this leaves the difficulty over the duality of body and mind unexplained. In the fundamental distinction of lower and higher faculties of the mind, the higher controlling the lower, we shall find that freedom of control wherein rests the essential condition of responsibility. The possession of the lower faculties of body and soul by the higher faculties of spirit is necessary to a sense of responsibility: if the possession becomes impaired, either by reason of the inefficiency of the bodily and mental organism or by reason of the dormancy of the controlling spirit, the personality is left unpossessed by reason and moral sense. Having thus so far dealt with the subject of control, we may go back to that of Knowledge, in order that we may see by an inquiry into its nature and how we come by it, how it is that by way of knowledge arises that freedom of choice in which responsibility consists. Knowledge is a result of the unification of reason and experience: neither reason nor experience alone can produce Knowledge. The controversy upon this question, as upon many others of a like nature, represents but different phases of the truth—serving as landmarks along the pathway of thought; it is in the reconciliation of partial truths, which have obtained validity in experience, that we attain to Knowledge. In these two factors, reason and experience, we have the bases of Knowledge: belief is the outcome of experience; faith is the outcome of reason .. .. . 20

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Oliver Lodge on "fundamental entities": life and mind; matter and energy; matter is endowed with energy; nature is essentially not "dead matter"; the radio-active elements; matter the manifestation of mind; there is "a spiritual energy which reacts upon nature"; as mind acts on matter, so will matter react on mind, and thus are we able to "get further towards bringing nerves and consciousness together," and to perceive that we may partially determine the course of external things and may partially be determined by them. We may now take one step further, and say, that it is by the directive power of knowledge exercised through faith that mind assumes the guidance and control of energy—by means of which we perform "work": the fallacy of putting forward "labour" <i>per se</i> , apart from the directive power of mind, as economically productive. Faith is the accompaniment of knowledge; knowledge without faith is bereft of reality—the exercise of faith in the attainment of knowledge, is seen in childhood—setting its energies to work; faith is the spiritual principle, springing from knowledge, which gives power to will and to do. By faith in knowledge, as the results of reason and experience, we come to know the truth; and "the truth shall make you free": all men do not attain to this freedom, but all men are subject to law and all men may recognise what is becoming and right .. .. .	25
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lower and higher faculties respectively of the soul and spirit be a true one, we shall find a corresponding distinction in the character of our actions according to the sources from which they spring, whether they be prompted by bodily wants and experiences or be controlled by reason and moral feeling. In treating of mental and bodily activity, we have to do with conation and volition: there is an element of feeling always involved in conation, together with intellectual representation; the distinction drawn between voluntary and involuntary action is one of degree only; there are all degrees of consciousness from the fully conscious down to sub-conscious; there is the highest probability for the assumption that the so-called spontaneous random or automatic movements common to animal life do not occur without the initiation of some mental impress; the forms of activity, generally classed under the heads of voluntary and involuntary movement, are all of varying degrees of consciousness from the fully conscious down to the sub-conscious or unconscious states. In treating of outward acts or manifestations of the will which may be productive of legal consequences, it is important to observe, that the law may have to take cognisance of acts ranging through all degrees of consciousness, voluntary or involuntary; actions originally voluntary may become involuntary through force of habit or by lack of attention; but, so far as accountability for conduct is concerned, it is generally held to be with acts consciously performed that the law has to do.

Having now so far traced these "lower and higher forms of psychosis" through intellectual and active processes, we now turn to the corresponding stages of development which may be observed in the case of feeling: here again we shall find the distinction between the higher and lower properties of the mind to be clearly marked. The conditions, under which Freedom of Will can be exercised, become now at once apparent: we may obtain freedom here only by helping others to be free; man by placing himself

under a higher law than that of nature, that of his spiritual consciousness is enabled to break the bonds of nature and necessity by accepting the burden of responsibility for the existence of evil in the raising of those that are cast down.

We have now to contemplate man as the possessor of a mind constituted of lower and higher faculties, corresponding to the trinity in unity of soul and body on one side and of spirit on the other: when the growth of mind under this unity is disturbed, the state is abnormal. For the complete explanation of an abnormal state of mind, we shall have to look in one or other of two directions—when on the one hand the brain is defective or diseased, or when on the other hand there is a cleavage of the personality and morbid or alien influences have taken possession: the tests which we have to apply in each case are different; in the one case the test of knowledge, in the other case the power of control. In these tests, we should discover the workings of a fully responsible and developed type of mind; but this “is an ideal never perfectly realised,” and we must be content to regard man as in a condition of divided responsibility in which the community must bear a share in the burden of the individual; and we must be prepared therefore to contemplate responsibility as essentially a question of degree to which certain rough and ready tests may be found practically useful. There are three well understood states of mind which show downward grades of departure from the normal, and which we shall find exemplified in the commission of wrongful acts negligence degeneracy insanity.

It appears to be practicable to treat of insanity under two main divisions, those of dementia and mania respectively: these phases may no doubt frequently be found in combination; but it will be found possible, it is conceived, to place the more recondite phases of alleged insanity, moral impulsive or emotional, under one or other of these divisions; and in that direction, it is thought, lies the solution of

some of the difficulties which beset a reconciliation of the differing views of the legal and medical professions on this subject. PAGE

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It now remains to apply the principles embodied in the idea of Responsibility, as they may relate to the individual to the social order and to the State. We have seen that the springs of action of a responsible being, guided by reason and moral sense, are to be found in knowledge exercised by faith: a fully responsible being is one who by reason of the faith that is in him has the power of acting upon knowledge. It is worth while attempting to realise the true import of knowledge—the ultimate principles on which it rests; we arrive at it by way of a double process—the one is a process of learning, the other of reasoning, and by combination of the two we obtain knowledge and understanding. Let one beware of narrowing the mind, in being content with a perception of phases of the truth rather than with the truth itself: from such states arise the dominance of the fixed idea, obtruding itself into all the affairs of life: hence come materialistic views of life, as in the insanity of Socialism. From these considerations it appears that aberration of the intellectual powers is not confined to those who may ordinarily be described as insane; but that men with intellectual power apparently unimpaired may so submerge and repress the spiritual part of their being that their views of life never reach reality. The State rests for its stability upon a due sense of the mutual responsibility of its component parts: if, in a regard for purely material well-being, the moral and spiritual

well-being of the community be lost sight of, one is losing the substance to grasp at the shadow. We have traced the growth of the fixed idea and have seen how it may acquire dominance in the mind of a healthy subject; but, before proceeding further in the elucidation of the abnormal we must first make hasty reference to normal legal relations in the region of contract and of tort.

The primitive idea on which all contractual relations are founded is the exercise of good faith—have the parties so pledged themselves one to the other upon the subject-matter of the contract that they have rendered themselves responsible one to the other for duly carrying out the same? Any failure in this good understanding will invalidate the contract—either by way of mistake misrepresentation fraud duress or undue influence. When the *bonâ fides* of one or other of the parties is called in question, the law may then have to lay down technical rules as tests: one or two illustrations to show the practical mode of dealing with such cases.

A man's rights are limited by corresponding duties towards other members of the community; and the law of tort imposes liability on breaches of duty established by municipal law. The element of negligence in tort is that which bears chiefly on the question of responsibility; and consists in such conduct as, by "failure to respond to judgment or conscience," amounts to a breach of duty and eventuates in damage: here we have the psychological element of responsibility, which a man must have, in attention to his surroundings; and the philosophic element of responsibility, which a man must have, in attention to the rights of others.

We now proceed to consider the acts of a human being, affecting his accountability in cases of contract and of tort, where his mental states may range through various degrees of abnormal presentment. Even as there are degrees of insanity, so there are degrees of responsibility. Sanity, in the ordinary affairs of life,

is the capacity to conform in conduct to the ordinary human standards of reason and self-control: we are thrown back, therefore, on the elaboration of practical rules which will guide the courts in setting up standards of right conduct for application in particular cases. Tracing in the history of development of English law, the evolution of sets of rules till we come to "the only uniform test of lunacy which is desirable or possible, viz. 'Was the person whose act is in question able to understand its nature . . . and was he a free agent. . . ?'" The course of development is exceedingly interesting and instructive—rule and exception following one upon another until a right principle is arrived at, and it is coming to be perceived that, in dealing with the juristic act of a lunatic, we should apply the like methods of testing its validity to those that are applied in the case of ordinary persons. Quoting cases in illustration of the development of the law, regarding the capacity of the insane to enter into contract to marry and to make a valid testament.

There seems to be some doubt as to the rules which ought to govern the civil responsibility of the insane on the commission of tort; but the like conclusion may be arrived at as that which we have seen evolved in the case of contract, namely, that a lunatic may be held liable in an action of tort in like manner as a person of sound mind, unless he can show such ground of exemption from civil liability for the act in question as the law in general will allow .. .. 46

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Proceeding to inquire whether and how far a standard of conduct may be set up which shall involve the determination of criminal responsibility: the question is yet far from having received a satisfactory solution,

The mere proof of insanity does not, in the eyes of the law, destroy the conditions of responsibility and accountability: we are thus presented with a problem of two dimensions, and have to answer, first, the medical question of the essential elements of insanity as a mental and bodily state, and secondly, the legal question of the effect produced in that state of the power to form a correct judgment and to control the actions. In arriving at some working theory that will serve to discriminate the mental conditions of the sane from the insane, we shall already have gone far to find an answer to the different aspects of the problem. The medical view of insanity, as essentially the result of physical disease or defect, fails when it is admitted that cases certainly do arise in which it is quite uncertain whether the mental phenomena are due to disease at all; but, if this medical view fails as a working theory for discriminating cases of the sane from the insane, where are we to find another? The human mind having been described as constituted of higher and lower faculties, insanity may be (as it has been said) allied to genius—in this, that the one is the ascent the other the descent of the spirit: we are thrown back, therefore, upon the more ancient theory of insanity as a mental disease in which physical disease may be an incident, in the same sense as disease may be an incident of sin and evil conduct. The legal knowledge test of responsibility, as laid down by the Judges in 1843, may be found workable in certain cases, where the Medical disease theory is applicable; but, in numerous cases where the feelings and will rather than the understanding are affected, they equally break down. There are three well-marked features which may be taken to distinguish a certain order of cases from the more ordinary cases of insanity, namely, (1) fixity of idea, (2) intensity of feeling, and (3) irresistible impulse: to the discrimination of these classes of cases, the disease theory and knowledge test afford no assistance. In treating of the psychological and the philosophic basis of

responsibility, we have seen, that man may be under necessity in respect of his lower faculties and in a state of freedom in respect of his higher faculties; and every man is presumed to possess that liberty of choice until the contrary be proved: insanity may arise either from deterioration of the lower faculties, or from disorder of the higher; and these states may appropriately be described as *dementia* and *mania* respectively; in the one case we have degeneration, in the other disintegration. The former sets of cases do not present much difficulty—it is with the latter that we have to deal, and for them we want some unfailing and ready test beyond the knowledge of right and wrong. These cases of mental disorder present certain well-defined intellectual and emotional derangements: the unity of consciousness is broken up, there is a divided personality; freedom has given way to necessity, there is possession by fixed idea feeling or impulse: they are distinguished by the degree of fixity or intensity by which they are accompanied.

Discussing the answers of the Judges to the House of Lords in 1843 (*McNaghten's Case*); pointing out that the failure of the Judges lay in the attempt to apply special rules of responsibility for criminal acts in cases of insanity, when it is sufficient to apply the ordinary rules of law in all cases: *intention* and *will* have to be considered in judging of the commission of a criminal act; yet the Judges, in framing their special rules for responsibility of the insane, disregarded entirely the question of *will*—inferring (as they did, in the case of the insane) power of control from the possession of knowledge; while possession of knowledge and power of control are separate presumptions, either of which may be rebutted, in the case of the sane. When there is a disintegrate personality, knowledge of right and wrong may exist apart from power of control; and so, it is not sufficient to ask only, "Does he know?" for, the pertinent question is, "Has he control?"

These groups of cases, under the head of mania,



cover most of the debatable ground between the medical and legal camps: they comprise for the most part cases of "possession" of "irresistible impulse" and of "moral insanity": the difficulty over moral insanity has arisen mainly from the fact, that the term has been used to describe two diverse mental states—one of which may be a sign of depravity or of decay, the other of disorganisation or of alien possession.

There can be no fixed standard of criminal responsibility: the standard will inevitably fluctuate according to the views which we take of the effects and aims of punishment: when we perceive how infinitely various are the ways in which the mind may be affected, we should be led to consider all punishment in the light of atonement and regeneration: breach of law carries its own condemnation; the objects of the State, in awarding punishments, should be atonement and reformation.

We have now reached the conclusion that, in the case of criminal responsibility alike with that of civil capacity, the ordinary rules of law may consistently be applied equally to the acts of the sane and of the insane.

Before proceeding, one may mention two other states of abnormality, besides that of lunacy, in which special questions affecting responsibility may arise: such questions may arise in respect of the qualifications that are attached by law to the acts of women and of children. The presumptions that the law makes in certain cases, in favour of women and children charged with offences, seem to be apart from humanitarian motives founded upon a true psychology .. 62

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Sanity consists in a normal and proportional development of the several faculties: that mind is normal in which

the object of loftiest endeavour is to reach the highest type in the development of mind: the best type of the normal man is that of the man inspired to a perception of the truth.

The development of mental capacity is subject to natural laws of growth and to volitional processes of deliberation and choice: a "common type of mental structure" may be seen to run through the different orders or classes of which a community is made up: development of brain is not commensurate with mental capacity, but rather with the capacity for work: the brain is but the medium of communication between the subjective and objective, the inner world of thought and the outer world of sense; it is the connecting link between the soul and spirit, whereby the higher and lower faculties of man are united: by our lower faculties, we are ever adding to our experience; by our higher we are capable of evolving rules and principles to be our guides through life: through these rules and principles acting on our experience, we form habits; we have thus action carried on consciously and sub-consciously; habits may be contrasted with instinct: as result of our experimenting and reasoning, the tendency is immediately to put these rules and principles into practice in the formation of habits, which go to the formation of disposition and character; habits once formed, there is a further tendency for the course of action to be guided by routine: the tendency, earlier or later, of falling into the groove of routine is the criterion in a rough measure of individual mental capacity.

When the individual mind has reached this stage, it has arrived at the limits of its development; and is fitted only for practical employment: *first of all*, there is the case of the great bulk of humankind, in which an early development of mind shows small capacity for further advancement; it is the natural law of the mass which retains them at the routine of manual labour; *secondly*, there is the case of a less numerous class whose mental capacity is greater and

who reach a later development; these fall into routine in the ranks of those engaged in commercial and official business; *finally*, there is a still less numerous class, to the full development of whose mental capacity advanced age in general alone sets limits; these are men of method rather than of routine, who are ever working out higher law, applying new principles, for the guidance of those around them—without whose light and leading a nation could not long be great. We are in presence here of a natural law of Progress, of upward and onward growth. These three orders may be seen to correspond with the habitual and effectual exercise of the bodily the intellectual and the spiritual powers respectively; and only by special gift and individual effort may progress be made from the lower into the higher.

The Law of Progress is the negation of the Socialistic dream: what becomes then of the cry for "equality of opportunity"? Equality of opportunity, in the creed of the Socialist, is denial of the law of progress; denial of equality of opportunity is made by no one but by the Socialist himself. Even a good thing may be done in a wrong way: the Socialist Scheme of University Education for "the workers" discussed, as affording an indication of the lines on which the endeavour is being made "to bring all private interests and private expectations into a proper subservience to the paramount interests of the commonwealth." As in the case of all great controversies that have agitated the human mind, the path of progress will not be found in the following out either extreme of Socialism or Individualism: the lesson may be learned only in the growth of a proper sense of mutual responsibility for the common good—the responsibility of the State to the individual, of the individual to the State.

Societies like individuals may be possessed by the spirit of evil—obsessed with false ideals, driven into destructive courses: to attempt to build up a commonwealth for "the workers" on the ruin of the private interests of the higher orders of the community—to

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## CHAPTER IX

It will not seriously be questioned that man has a spiritual as well as a material origin; the higher self corresponding with his spiritual origin, the lower self with his material origin: when the spiritual and material faculties work together in unison, the man is sane; when they work no longer together in unison, the man is no longer sane. The material part of man is endowed with life—has a soul (*anima*) coming in with the first breath of life and going out with the last; the spiritual part of man is self-existent, is fitted to control soul and body during life, and is freed at the moment of dissolution. In these spiritual and material faculties, we are able to trace the several origins of the intuitional and the empirical qualities of the mind. The spirit is the true self; the soul and body are the manifestation (*incarnation*) of the spirit; but the spirit may be deposed from its seat and soul and body be possessed by alien influences—thus arises the phenomenon of a divided personality.

The normal mind being thus constituted of supra-liminal and subliminal faculties, the impairment or dispossession of either of these faculties must inevitably react upon the three basal functions of knowing feeling and willing; and we shall accordingly expect to see under such circumstances evidences in various degrees of defective reason perverted moral sense and misdirected action. We may classify insane states, for convenience sake, under three main headings—(1) idiocy, (2) dementia, (3) mania: it is to the third order of cases, as presenting a difficulty in marking them off from cases of ordinary depravity, that we have to give special attention.

The difficulty has arisen from not perceiving that insanity is owing to the inharmonious action of the higher and lower faculties and may have its origin either in the impairment of the lower or in the dis-possession or perversion of the higher. The history of many cases of insanity is to be read in the growth of insistent ideas: here we come upon signs of a divided personality—the evil warring against the good: the evidence goes to prove that the character of the man has changed, and the warring elements have become conspicuous; in this way the control of the true self may suffer eclipse. Faith has given place to instability and doubt: when faith, which is the spiritual power, has given way to instability and doubt, the organism becomes the creature of suggestion. We may follow out the process artificially under the phenomena of hypnotism .. .. 95

## CHAPTER X

Let us consider what takes place under hypnotism, and in how far hypnotic states may resemble certain phases of insanity. We have seen how power resides in the spirit through faith: when faith gives way to instability and doubt, the mind lies open to suggestion and alien influences; these harden into insistent ideas which govern the feelings and the will, and the organism becomes possessed.

In following out one or two reported cases of deviation from the normal, we may notice how similar are the manifestations artificially induced in the hypnotised subject to those which we are familiar with in alleged cases of insanity, and thus perchance we may find in hypnotic phenomena an explanation of cases of possession and of the various forms of mania. A marked feature of the hypnotic state, in common with certain insane states, is liability to delusion—arising from self-suggestion or alien influence; and

we may find the essential characteristic of a divided personality to be the invasion of an alien power.

By way of illustration of an insistent course of ideas, an instance of spontaneous somnambulism is given of a young lady who was found to have walked three miles in her night attire and to have scaled a difficult wall in her way while fast asleep : in the report of the case, a medical correspondent (whose remarks are quoted) is fain to admit, that "this sort of act . . . is a mystery which brain specialists cannot elucidate." The reason is not far to seek ; for, the mystery lies deeper than what an inquiry into the functioning of the brain is ever likely to reach : explanation of how there may come to "be a real break" in the personality, and how the whole of the circumstances are simply explainable on the hypothesis of insistent ideas acting on a lower stratum than that of the supraliminal or conscious self.

By way of illustration of "possession," an instance of mania is given, taken from an article by Mr. Harold Begbie in which he relates a story, told to him by an attendant of a lunatic asylum, of a madman who in his last moments resumed his reason and prepared his soul in accents of fervent prayer for death. In this and similar cases, we observe a sudden return to sanity from an insane state—a divided or it may be an alternating personality : in the one case the spirit has lost control and the reason has temporarily vanished ; in the other case, the spirit has regained control and reason is restored .. 101

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We are now in a better position to distinguish evidences of insanity from those of mere depravity. We have seen that evidences of insanity are to be found either in an impairment or in a disintegration of the mental faculties : in the former case we have to seek for

physical accompaniments, in the latter for psychical accompaniments, as their distinguishing features respectively : it is the latter order of cases that are least easily distinguishable from cases of mere depravity. We now proceed to apply these principles to a few of the cases that have come before the Courts in which insanity has been pleaded as a defence. One result may be to sweep out of the way the last vestiges of a controversy over what has been called "moral insanity."

Here follows the citation of a few unselected cases, taken from English and Scottish Law Reports, so as to illustrate on one side or the other the principles laid down.

The endeavour has been made to show that precisely the same rules of law should apply in treating of the responsibility of the sane and of the insane ; and that confusion and difficulty have arisen from the notion that some special rules should be applied in the trial of cases in which insanity has been pleaded .. 112

## CHAPTER XII

What remedy then is there for these insanities ; by what methods may they be countervailed : faith may effect cures on the body ; but, when faith is not, what are we to do ? What is required is a reconstituted faith—the resumption of control by the true self : we want a true philosophy, a true religion.

There are two evolutionary forces ever acting on the development of man's character—the *realism* of his surroundings and the *idealism* of his philosophic and religious aspirations : the development of his nature whether for good or evil depends on the way the one force has acted and is acting on the other. The responsibility for the formation of a true and high ideal lies at the door of every individual : when that ideal is low, the descent may be sudden and

profound ; but, short of this we see around us many false ideals striving for the mastery. One is led thus to discern a distinct cleavage into two great sections of society—those whose aims and tendencies are mainly material, and those whose aims and tendencies are mainly spiritual : and the contrast becomes very marked in the methods by which they are wont respectively to endeavour to attain their ends. There is an appreciative method, and there is a descriptive method: the world of spiritual appreciation is at once the higher ideal and the deeper reality.

Mind causes, is not caused: in this we have the guarantee of freedom of will ; but, when mind is split up and spirit no longer holds control, freedom has given way to necessity and the creature is possessed : in respect of spiritual insight alone do we ever reach final truth. We should expect then to reach ultimate truths by the appreciative rather than by the descriptive method.

Let us examine for a moment two antagonistic systems in modern philosophy, of an idealism on the one hand and of a realism on the other, which may exemplify the working of the respective methods.

Professor Royce's "Spirit of Modern Philosophy": his theory of evolution and of the Absolute—evolution with a plan of its own and an absolute self outside of that plan, leading to the pantheistic conclusion that "the real world must be a mind or else a group of minds."

Professor Wm. James's "Pragmatism," in which he puts forward a theory for ascertaining truth by Empirical methods at the expense of Rationalistic: truth, he avers, is to an ascertainable extent a man-made product; we may cherish our own ideals and wait upon chance to give them actuality, "a gap that we can spring into," and then by our own act we find salvation.

Criticism of the foregoing systems: do either of them help us to the realisation of a true and high ideal? They may be taken as representative between



them of the present-day field of speculation in philosophy: may either of them be accepted as the expression of an ultimate truth in an ideal worth striving after? Criticising them adversely, and pointing out that by a double process of experimenting and reasoning alone do we reach the truth, and that the outcome of this is faith: if our faith be centered on what is false, all our efforts will be misdirected, and we shall be so far insane.

If these criticisms be well founded, we have to ask—what then is truth and how are we to find it? By aid of all our faculties of body soul and spirit, we have within the measure of our knowledge the capacity for arriving at the truth: men fail in arriving at the truth because they do not earnestly strive after it; they allow their predispositions and prejudices to interfere.

We must know ourselves before we can know God in whom is truth. Let man first know himself, the trinity in unity of spirit body and soul; then and not till then may he have a clear conception of the Deity—the Spirit the Word the Life, the Trinity in Unity of the Godhead .. .. . 137

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# RESPONSIBILITY IN LAW

## I

IF one may judge by what has been written, and continues to be written on the subject, the treatment of the question of Responsibility in Law has not yet arrived at a satisfactory solution. In attempting to carry its discussion a little further, if not indeed to solve the problem, it will be necessary first of all to consider what is meant definitely by Law and what by Responsibility. It seems at once apparent that, until we arrive finally at a correct idea of what is involved in the term Law, we are not likely to arrive at a solution of the problem of Responsibility. If we are to confine our notion of Law within the limits assigned to it by the well-known definition of Austin (*a*), and to say, that anything outside of it is but an "extension of its meaning by metaphor or analogy," then our notion of Responsibility will be apt to suffer a like limitation; and the differences of opinion which subsist—markedly between the medical and legal professions—upon some phases of the question are likely to

(a) "Lectures on Jurisprudence," Campbell's Abridgment, pp. 5, 11, 16, etc.

continue. Law must be viewed from a higher standpoint than that taken by Austin in his definition of positive law, and may be defined as the continuous and uniform exhibition of a governing power in thought or action. Continuity and uniformity, then, seem to be the distinguishing features of law (*b*); and command is but an incidental circumstance imposed on it by way of analogy of the State to a supremely governing power. If this view be correct, the breach of law is a breach of continuity and will be followed by catastrophe (*c*); and experience should lead us to expect this result as the inevitable consequence. By "a common understanding and a common purpose," society learns to exist under a reign of law: by "orderly and systematic knowledge," Man gains that "prescience and power" (*d*) which is the outcome of a true perception of universal and necessary law (*e*). "The conditions are in us" (*f*), but how does this knowledge of law come to us? It comes to us in the way of other human knowledge, by the interaction of the natural and the spiritual constitution of our being (*g*): it is enough to state the position here, but it must be worked out later on. We have to

(*b*) "Grammar of Science," Pearson, ch. III, sect. 11.

(*c*) "Naturalism and Agnosticism," Ward, Vol. I, 226; Vol. II, 261.

(*d*) *Ibid.*, Vol. II, pp. 237, 238, 239; 247, 248; 251, 253, 225, 252, 249-252, 233.

(*e*) *Ibid.*, 250, 251.

(*f*) *Ibid.*, 250.

(*g*) "Essays on Literature and Philosophy," Caird, Vol. II, pp. 513, 449, 503, 437.

find a true Psychology (*h*) in which the natural and the spiritual in man are distinguished and in which we shall find law and responsibility explained in the unity of self-consciousness. How, then, do we arrive at "the conception of the universe as a realm of law" (*i*): is it true, to say, that we derive our notion of universal law from laws imposed on man by an overmastering authority? (*k*) It may be admitted that, in this way, arose man's earliest conception of law: either by the belief in God or gods, deifying the forces of nature or rising to the conception of an All-wise All-good Supreme Being, man came to realise his impotence and to realise the inevitableness of punishment for the breach of law, for doing that which the gods forbid, for committing wrong: and so he came to find that he must live under law, to escape catastrophe. Thus man came to make laws for himself: to escape extinction, he learned the social order; to ward off death and destruction, he enforced the decrees of the gods upon those who would have brought the State in jeopardy—catastrophe upon the community was averted by punishment of the individual. It seems, then, that the conception of human law historically is derived from the divine: and that its leading feature is not that either of command or punishment, but rather that of uniformity or consecutive

(*h*) Ibid., 441, 451, 421; "Naturalism and Agnosticism," Ward, Vol. II, pp. 233, 234.

(*i*) Ibid., Vol. II, 233.

(*k*) Ibid., 249, 251, 252; Campbell's Austin, "Jurisprudence," 5, 6; "Jurisprudence," Holland, 8th edition (1896), 37 (end of ch. III).

order—indeed breach of law and retribution will appear as cause and effect. Accountability to law must be something in the concrete or in the abstract—then to what or to whom? It may be to universal law or to a universal law-giver; or it may be considered as centred in the State. But the State itself, as history shows, is accountable to the law of nature and ultimately to the moral law for its very existence. Man, that he might save himself from the law of nature—in which multitudes go down, leaving only the fittest—had to ask himself: “Knowest thou the ordinances of Heaven? Canst thou determine the influence thereof on the earth?” (*l*) Thus was man led to a true conception of the existence of universal law; and yet, living subject to law, he was led to perceive that to observe the law is to transcend it (*m*) and to become free. On this question of Freedom rests that of Responsibility.

(*l*) Book of Job, ch. xxxviii, 33.

(*m*) “Essays on Literature and Philosophy,” Caird, Vol. II, 283.



## II

FOR the survey of Responsibility, a somewhat wider range is necessary. The notion of Responsibility lies deep down within the recesses of philosophy and religion—which are indeed one; a true philosophy cannot be reached but through true religion—leading up through human knowledge to the word of God (*n*). To deal with Responsibility on any other basis must prove inadequate. Let it not be misunderstood: even were the everlasting God of the Christian to be a myth, and some sort of pantheism or deism to be a reality, the position would not be altered. Few indeed have the temerity to deny the need of Religion to humanity; each man has to form for himself, or accept from others in whom he trusts, his conception of religious truth; Sir Oliver Lodge(*o*) seems to think that the conception of a true religion has to wait upon the advance of metapsychical research—perhaps the latest form of the Religion of Humanity. After all, the only conclusive test of true religion open to our finite intelligence is that which we apply to any ordinary branch of knowledge, when

(*n*) "Essays," Caird, Vol. I, pp. 207, 206-210; St. John, vi. 63.

(*o*) Lecture delivered at Oxford, 13th November, 1905, on "Psychical Research and its bearing on Science and Religion;" Sir Oliver Lodge, "Life and Matter," pp. 11, 124, 155.

we ask ourselves, "Does our reason stamp it with the seal of faith; has it objective validity in our experience? (*p*)

It will be necessary first, to find a psychological basis for Responsibility. This will be of great advantage, but it will not carry us far; for, according to the ordinarily accepted principles of Psychology, the natural side of the constitution of man is presented to us for analysis; while the spiritual side is either kept blank or confused with the natural. It will be therefore necessary, in the second place, to supply a more complete psychology of the human mind in relation to the spiritual part of man, and thereby to arrive at a philosophically ample basis for Responsibility. When this position is happily reached, it may be possible so to determine the nature of Responsibility that many of the legal questions that arise, in the departments of contract tort and crime, may meet with an easier and less uncertain solution.

The attempt has been made to account for Responsibility and justify punishment on quite other grounds than these. Responsibility, as commonly understood, goes no further than the contemplation of liability to punishment for wrongdoing under some moral or legal code. A recently published treatise (*q*), which affects to treat of law in relation to responsibility as it "ought to be" rather than as it "is," uses the term "responsible" in the sense of

(*p*) "Essays," Caird, Vol. II, p. 454; "Elements of General Philosophy," Robertson, pp. 97, 116, 15.

(*q*) "Criminal Responsibility," Mercier, pp. 8, 9.

"Rightly liable to punishment." Responsibility is stated to be "the quality of being rightly liable to punishment," and, "is therefore not a quality of the person who has inflicted the pain, but a demand on the part of others that he shall suffer" (*r*). "A person is held responsible when the enlightened public opinion of his age and country demands that he shall be made to suffer in return for pain that he has inflicted": and this is called "the Sentiment of Justice." Furthermore, "legal punishment in its origin is essentially vindictive . . . whenever punishment is inflicted, the primary object is to award suffering in retaliation for evil . . . the primary aim of punishment . . . is shown, both by its history and its current use, to be primarily and essentially retribution" (*s*). It is a little difficult to understand why a person should be held liable to punishment for a "quality" which is not in him but in the person demanding it; the situation seems to bear some analogy to the wolf and the lamb in the fable. It is at once apparent that, on this view, the basis of Responsibility rests on a sanction no higher than the law of nature, common to man and to the lower animals: it is the law of retaliation. The law of England has already, happily, advanced beyond this stage: and it is one of the main purposes of this treatise to show how the law of England has,

(*r*) Ibid., pp. 8, 16, 17.

(*s*) Ibid. It is not my purpose to enter on a criticism of this treatise, although I may have to refer to it occasionally; to any lawyer it would seem a mere waste of time to enter on a consideration of what the law "ought to be" without a previous most careful consideration of what the law "is."

in dealing tenderly with the weak and erring, gone some way to solve the problem of Responsibility; and to show in what direction its further solution lies.

In a legal sense, the condition of Responsibility is that of the man who is considered capable of acting up to the standard of what is required of him, either in a special capacity or in a general way. This may be a sufficient definition of responsibility for that of which the law has to take immediate cognisance, namely, for the acts of a man as they come before it; but responsibility cannot be limited in this way without grave danger to the State. The State may shift its own responsibility for a time, but cannot get rid of it; it is responsible for the good of the whole and all its parts. It is not enough for the State to delegate to a judicial system its duties, in the preservation of order and the punishment of offenders: "Woe unto the world because of offences! . . . but woe to that man by whom the occasion of stumbling cometh" (*t*); it is the duty of the State to remove occasions of stumbling. Mr. Mercier declares (*u*) that the aid of punishment is "primarily and essentially retribution." This assumption seems to proceed from a confusion of cause and effect. Punishment no doubt produces a retributive effect—a requital for evil done; and historically it may have had no higher aim than that of retaliation—the return of like for like. The nature of punishment, after all, is not fixed by its historical origin: what this is, we

(*t*) St. Matthew, xviii. 7.

(*u*) "Criminal Responsibility," Mercier, p. 16.

should be able to learn by experience in the development of human institutions. It has already been shown that the natural result of breach of law is catastrophe; and that the State, out of regard for its own security, must order itself according to law, and should take the promptest measures to avert any breach of continuity by removing the law-breaker from the body politic. If this view be correct, it follows that the primary object or aim of punishment will be to preserve order and continuity in the State; but, inasmuch as the State is weakened by the removal of any of its members, the secondary object will be reformation of the law-breaker; and, quite apart from these objects or aims, two effects should be produced—requit for the evil, prevention of its recurrence. These, then, should be the objects and results of punishment: anything in the nature of retaliation or vindictiveness ought stringently to be eliminated from the code of a civilised State. The law of self-preservation alone ought to teach one that even in England the system of legal punishments is not only barbarous and futile, but directly contributory to the evils which it is intended to suppress. When the far-reaching tendrils of human action in the region of responsibility are fully realised, we may hope to see more recognition of the need for a reformatory element in punishment.

This conception of law, as the realisation of an overmastering authority—universal, uniform, continuous (x)—to which law instituted by man is law

(x) "Naturalism and Agnosticism," Ward, Vol. II, pp. 219, 251, 252.

but by analogy, is vital. No theory of Responsibility, by which the infliction of punishment may be justified, is possible apart from it. "Till heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled" (*y*). Law cannot be broken but by catastrophe: the breach is blotted out: there must be reparation, if law is to continue. If it were not so, there would be no law. Then, for every breach of law there must be atonement, to enable law to continue: and, reparation being made, the opportunity for reformation arises. Reformation is possible to man through the spirit that is within him: reparation being made, he may reform his ways—he may be born again of the spirit (*z*).

Regarding municipal law as a principle of conduct imposed on us by an overmastering authority, we must regard Responsibility as the obligation of carrying out that principle at our peril. In its widest sense, Responsibility may be regarded as that state of an intelligent and sentient being in which he has the capacity to act according to law. In proceeding to inquire into the nature of this capacity, we shall be led into an examination of the constitution of Mind: it will be necessary to find, as has been said, a psychological basis for responsibility.

Viewed psychologically, Mind has been declared to be "a name for our subjective experience" (*a*): and "the first thing that strikes us in our conscious

(*y*) St. Matthew, v. 18.

(*z*) St. John, iii. 3.

(*a*) "Elements of Psychology," Robertson, pp. 7, 8, 15, 48, 52, 10, 16, 49.

experience is the continuity of it" (b). "Our whole mental experience presents three distinguishable phases . . . states or facts of consciousness, which may be exhaustively described . . . in terms of three heads: and these heads . . . are Feeling, Knowing, Willing. Every fact of consciousness may be brought under one or more of these heads" (c). Hence "we may say that knowing, feeling, and willing are the three primary functions of mind" (d). The growth of Mind (e) is to be traced mainly from sense-experience issuing by way of impulse from our general sensibility and the play of our sense-organs (f). "Sensation is a fact of our conscious experience—a fact of mind" (g). Again, we have to distinguish between active sense and passive sense (h); in the former case, we are "actively seeking sensation," and in this we have "the substructure for Perception." A percept has been described as "an intellectual construction on occasion of sense, together with present consciousness of activity exerted" (i): percept, then, is an "intellectual construction out of sensations," and on this

(b) *Ibid.*, 16.

(c) *Ibid.*, Robertson, p. 21; "Mental and Moral Science," Bain, pp. 2, 18, 68, 200, 215, 402, 342, 90; "The Human Mind," Sully, Vol. I, pp. 59, 61, 64, 66, 67.

(d) *Ibid.*, Vol. I, p. 67.

(e) "Psychology," 48, 56, 58, 64, 67; "Naturalism and Agnosticism," Vol. II, pp. 195, 196.

(f) *Ibid.*, 56, 64, 67; "Mental and Moral Science," 14.

(g) *Ibid.*, 45.

(h) "Psychology," pp. 88, 99, 96; "Naturalism and Agnosticism," Vol. II, pp. 235, 237, 246.

(i) "Psychology," pp. 133, 134, 97.

base "further construction takes place" (*k*). We have first a presentation to the Mind out of present sensations—producing percept, the process being known as perception: but, secondly, we may have "a percept reproduced in consciousness . . . without accompanying presentative form"—in re-presentative form or image, the process being known as imagination. Re-presentation in consciousness of what previously has been experienced is what is called Memory (*l*). Re-presentative imagination, or "bringing what was in our consciousness back again to our consciousness" is not to be confounded with constructive imagination, in the popular sense, where further functions of the Mind than those just enumerated have place, and which does not now concern us (*m*): what we have to do with here is the "memory—image." The percept and image, although thus closely related (*n*), are to be distinguished by the fact that the percept arises in consciousness by way of direct sense-stimulus, whereas in the case of image there is no such stimulation (*o*). In the growth of Mind, perception and imagination—presentation and re-presentation—are closely associated (*p*); but there is an important distinction to be noticed here of the manner in which the percept and the image respectively come

(*k*) "Psychology," p. 134.

(*l*) Ibid., pp. 135, 134.

(*m*) Ibid., Robertson, pp. 137, 140; "The Human Mind," Sully, Vol. I, pp. 279, 362.

(*n*) "Psychology," pp. 136, 142, 146.

(*o*) Ibid., pp. 142, 145.

(*p*) Ibid., pp. 136, 142, 146, 147; "Mental and Moral Science," Bain, pp. 89, 90.



into consciousness (*q*): "in perception there is always something independent of the laws of Mind; but the flow of images is purely psychological" (*r*). The percept comes into consciousness, in the first place, by way of physical surroundings; and, only in the second place, by way of psychological conditions: to the extent to which it is affected by physical surroundings, it is physically determined; to the extent to which it is affected by psychological conditions, it is psychologically determined—"the physical and the psychical meet in perception . . . but the flow of images is purely psychological" (*s*). The percept then comes into our experience, physically by way of our environment, and mentally by way of the attention which we give to it; and percepts have the tendency to persist, to reinstate themselves as images in the mind by way of suggestion (*t*).

We are now in possession of data sufficient to find a psychological basis for Responsibility. "Our consciousness is never exclusively perceptive [i.e. *physically determined* in respect of environment, and *psychologically determined* in respect of the amount of attention given to it (*u*)] . . . for any length of time; it is always liable to be broken in upon by suggested images" (*x*); for "re-presentative

(*q*) "Psychology," pp. 145, 146.

(*r*) Ibid., p. 146.

(*s*) Ibid., pp. 145, 146, 142.

(*t*) "The Human Mind," Vol. I, pp. 145, 146, 148, 152, 154; 76, 77, 79.

(*u*) "Psychology," pp. 145, 146.

(*x*) Ibid., pp. 154, 156, 146, 166.

consciousness flows in for us in connection with presentative consciousness" (y). *Responsibility then may arise, with regard to an event, in presentative consciousness, in respect of the extent of attention which is turned upon it; and in representative consciousness, in respect of the nature and extent of the suggested images by which our consciousness is always liable to be broken in upon (z). It seems then that, within the limits of individual experience—confined to sense-perception and representative imagination (a), the questions that may be asked in respect of accountability for any particular action, are two: (1) Is the Mind capable of giving, and has it given, the necessary attention to the matter in hand; and (2) the images or ideas, suggested to the individual consciousness, are they normal or abnormal? (b) To put it in another way: we cannot regulate our perceiving and imagining (c) as we can our thoughts and desires; to a certain extent they are outside of the direction of our will—being physically determined by our environment, and psychologically determined by suggestion and association arising out of that environment and flowing from our subjective experience. It will follow, therefore, that, under the law of nature as psychologically explained, the human mind is not wholly self-determining. Taking the natural man, as mentally equipped with the*

(y) "Psychology," pp. 150, 163, 160.

(z) Ibid., pp. 144, 145, 146, 150, 154, 156.

(a) Ibid., p. 136.

(b) Ibid., pp. 135, 140, 149.

(c) Ibid., p. 189.

three primary functions of intellection feeling and conation (*d*), we find that there is an element of Necessity in the intellective function of the mind. But the Mind cannot be solely intellective at any one time (*e*); feeling and conation as well as intellection enter into mental operations even at the earliest stages of experience: and the work of intellection is psychologically complete when its three products—percept, image, concept (or general notion), have been explained (*f*). The three corresponding processes—perception, imagination, conception—may be taken as the intellectual groundwork of the natural faculties of man—in no way distinctly differentiating him from the lower animal creation, except as to degrees of growth or development (*g*).

Here, then, we have a dualism of body and soul (*h*). How are we to find the means of unification; how are we to bring together the “related presentative and representative consciousness”; how are we “to get farther towards bringing nerves and consciousness together?” (*i*) We have an answer within our own self-consciousness, and in that group of faculties (*k*) which in distinction from the natural faculties of

(*d*) “Psychology,” 21, 165.

(*e*) *Ibid.*, 25, 56, 188, 191, 193, 199, 220; 48, 200, 199; “Human Mind,” Vol. II, 296, 297, 298.

(*f*) *Ibid.*, 165, 166; “Philosophy,” 186, 190; 120, 121.

(*g*) “Psychology,” 56, 52, 174, 48; 20; “Philosophy,” p. 120; “The Human Mind,” Vol. I, 56, 57, 58; 20, 21; 71.

(*h*) *Ibid.*, pp. 136, 166; “Philosophy,” pp. 189, 120, 121.

(*i*) “Psychology,” 151; “Philosophy,” 224; “The Human Mind,” Vol. II., Appx. N, p. 366; Vol. I, 52.

(*k*) *Ibid.*, p. 20; “Philosophy,” pp. 120, 121; “Human Mind,” Vol. I, 71; Vol. II, 302.

man may be classed as the spiritual or constructive faculties of the Mind exercised in the operations of reason and conscience (*l*).

It is evident that the unification of body and soul, Mind and Matter, must spring from some source other than the body and soul which it affects to unify. It must have its source, then, in the tripartite nature of man—body, soul, and spirit: in spirit, in the unifying principle of self-consciousness, we have the uprising of that reason by means of which “the opposition of thought to its object . . . may be transcended” (*m*).

We have now reached this result, that the growth of Mind by way of the three primary functions—intellection feeling and will—is commensurate with our mental experience in so far as the purely animal nature of man is concerned (*n*), but that new phases of mind must be made manifest before we can account for the higher facts of self-conscious experience. We must look for a regulative faculty to control the disparate functions of body and of soul, moving from higher law than that of mere animal endowment (*o*): peradventure this regulative faculty may be found in the spirit of man working by way of reason and conscience. Thus we shall have the

(*l*) “Naturalism and Agnosticism,” Ward, Vol. II, 256; “Mental and Moral Science,” Bain, 146, 161, 448, 431, 456.

(*m*) “Essays on Literature and Philosophy,” Caird, Vol. II, pp. 431, 513, 514, 515, 523, 528, 538; 1 Thessalonians, v. 23; Hebrews, iv. 12; “Human Personality,” Myer, Vol. II, pp. 193, 254.

(*n*) “Psychology,” pp. 50-52, 21, 51; 27.

(*o*) “Naturalism and Agnosticism,” Ward, Vol. II, pp. 254-257; “Philosophy,” pp. 181-185, 351, 120, 137.

three primary functions of mind capable of becoming directed each to an end or ideal—intellection discriminating between the true and the false; feeling becoming productive of the higher emotions; and will conducing to well-being by choice between the right and the wrong (*p*).

Practically, society forms for itself certain standards of logical consistency, of control of feeling, and of right conduct as the normal rule of life; any marked departure therefrom will be considered abnormal (*q*). Reason, then, may be described as a faculty of the Mind “centrally initiated,” which has to do with the regulation of mental functions “peripherally-initiated;” and thereby we are enabled to rise to the knowledge of truth of good taste and of right conduct—and in this knowledge we find the philosophic basis for Responsibility (*r*).

We may now proceed to inquire into the nature of Knowledge, and how we come to possess that knowledge and power of control which raises us to a position of moral and, as a consequence, legal responsibility (*s*). But first it is of importance to

(*p*) “Philosophy,” pp. 181, 198, 191, 221, 220; “Psychology,” 214; “Mental and Moral Science,” Bain, 437, 442, 495, 346.

(*q*) “Psychology,” pp. 140–142, 177, 191, 219, 241; “Philosophy,” 182, 183; “The Human Mind,” Sully, Vol. II, pp. 234, 310, 311; “Mental and Moral Science,” pp. 215, 238, 386, 222; “Naturalism and Agnosticism,” Vol. II, 281, 449.

(*r*) “Naturalism and Agnosticism,” Vol. II, pp. 225–228; “Psychology,” 199; “Philosophy,” 183, 187, 189; “Life and Matter,” Lodge, 84, 81.

(*s*) “Psychology,” pp. 237, 241, 243; “Philosophy,” 97, 98, 99, 187, 189; “Naturalism and Agnosticism,” Ward, Vol. II, pp. 221, 250, 254, 256, 272–276.

notice some of the relations entering into the currently-accepted threefold division of Mind. Feeling and Conation have been described as forming "the two poles of consciousness," Intellection lying between them (*t*), in respect of the quality of activity: feeling, or being affected or excited, is predominately passive; conation or willing is characteristically active; "intellection also implies activity." The question has been asked whether conation be, in fact, a distinct phase of mind equally with the other two: "directly or indirectly, . . . you will always find an element of feeling involved in conation, together with intellectual representation" (*u*). The fact seems to be that the primitive elements of will are all that we can get from the natural faculties (comprised in the primary functions of Mind), and that evidence of the matured will must be sought for in the spiritual faculties of mind (*x*). And here it seems that a clear distinction ought to be taken between a mere striving after or desiring to act—activity impelled by inclination instinct or appetite, and "volition of a developed type"—the purposed choice of means to an end as the outcome of reason (*y*). This seems to point to a position of essential importance in the evolution of volitional control. Bain (*z*) has stated the primitive elements of the will to be (1) the spontaneity of movement,

(*t*) "Psychology," pp. 23, 25, 186, 21, 22.

(*u*) Ibid., pp. 21, 187, 25, 186, 88, 23, 221, 222, 220.

(*x*) "Mental and Moral Science," pp. 2, 68, 318, 325.

(*y*) "Psychology," pp. 221, 222, 237, 238, 23.

(*z*) "Mental and Moral Science," pp. 318, 325, 337, 79, 80; 338, 339, 241, 218, 226-228; 82, 89; 2, 68.

and (2) the law of self-conservation — the will becoming matured by a process of education : but, when Bain comes to consider how the Will is to be controlled, he seems to have no better explanation to offer than that the Feelings come under command by training and the Thoughts by attention ; and, no doubt, this may be taken to be a fair description of what takes place in the animal organisation. We are led, therefore, to the conclusion that the natural faculties, as centred in body and soul and described as the three primary functions of mind, give us no higher warrant of Responsibility than that of following natural instincts and inclinations. We have to seek, then, in the higher faculties of the Mind, as centred in the spirit of man and exemplified in reason and moral sense, for the self-conscious unity in which Responsibility has its seat.

### III

WE have seen, in our *résumé* of psychological science, how the natural man in thought advances by way of perception representative imagination and conception (*a*); how in conation his activity is promoted by a certain spontaneity of movement and by a certain primitive instinct of self-conservation (*b*); and how in feeling he may be affected by certain bodily or mental experiences which have a bearing upon both thought and action (*c*); and in these processes we have the groundwork of all his Mental States.

The attempt has been made, by those holding more or less of a materialistic view of the origin of mind in physiological changes (*d*), to trace a continuous series of acquisitions, under laws of contiguity and of association, whereby the lower faculties of the mind become gradually merged in the higher, and thereby to account for the possession by man of reasoning and moral powers. It is difficult to see how the duality of body and soul, which we have

(*a*) "Psychology," p. 165.

(*b*) "Mental and Moral Science," pp. 79, 80; 318, 322; 218.

(*c*) Ibid., pp. 215, 217, 218, 227, 228.

(*d*) Ibid., pp. 82, 85, 114, 127, 143, 151, 161, 176, 181, 188, 197, 198.



seen affected in different ways under the processes of perception and representation, can be overcome except by the working of a higher law—a higher law which cannot have its source in those factors or elements which it transcends and unifies (e); but, so soon as we conceive man as a being endowed with lower faculties in respect of his animal nature and with higher faculties in respect of his spiritual nature, the difficulty vanishes. It is in this fundamental distinction, this division of the human mind into lower and higher faculties—the one group having their course in the animal nature, the other in the spiritual—that we have traced out the psychological and philosophical bases of Responsibility; and it is in this distinction that we may hope to discover the solution of the mystery which has enveloped any definition or satisfactory explanation of the varying states of responsibility and irresponsibility. When we have come to see that the action of our purely animal faculties imposes on us no sense of moral responsibility but that of animal inclinations and instincts; and that the action of our spiritual faculties, when allowed free scope, control and govern the action of the lower; we shall come to see that in this freedom of control, by the higher faculties of the lower, is contained the essential condition of responsibility.

The possession, then, of the lower faculties of body and soul by the higher faculties of spirit is necessary to a sense of responsibility. If the possession become impaired, either by reason of the inefficiency

(e) "Essays," Caird, Vol. II, pp. 428, 430, 431.

of the bodily and mental organism on one side, or by reason of the lapse or dormancy of the controlling spirit on the other, the effect may be either to leave the organism disordered in its bodily and mental functions by disease, or to leave it unpossessed by reason and moral sense. Irresponsibility, then, may arise either from the mental functions being disordered by bodily disease, or from the shutting off from soul and body of the spiritual control of reason and moral sense. In the former case, the chief characteristics are those of disorganisation and decay—the impairment of mental faculty and the maladjustment to circumstances of what remains; in the latter case, those of a divided personality—the tendency to delusion and illusory suggestion, to possession by fixed ideas and otherwise (*f*).

Having thus so far dealt with the subject of control, we may go back to where we left off, when we found in a knowledge of the good the beautiful and the true (*g*) a philosophic basis for the conception of Responsibility, and take up the subject of Knowledge by an inquiry into its nature and how we come by it. We may then be able to see how, by way of Knowledge, arises that freedom of choice in which Responsibility consists.

In all great controversies which have from time to time agitated the human mind, and in which the

(*f*) "Human Personality," Meyers, Vol. I, pp. 40, 41, 51; "Mental and Moral Science," Bain, pp. 91, 279, 351, 218, 442; "The Human Mind," Sully, Vol. II, pp. 320, 321, 322.

(*g*) "Life and Matter," Lodge, pp. 84-88; "General Philosophy," pp. 181, 182.

reason of man has marked out clearly defined opinion upon one side and another, it will generally be found that the cleavage represents different phases of the truth; and that, to the attainment of final conclusions, we have to go between and beyond them (*h*). The distinctions over which so much time and labour have been expended are seen to be no more valid than as stepping stones along the pathway of thought, embodying opinion or belief that possesses no more than individual cogency—that is wanting in that objective reality “which is valid for the consciousness of all” (*i*). Knowledge is a result of the unification of reason and experience (*k*); and it is in the reconciliation of partial truths, which have obtained validity in experience, that we attain to knowledge.

In these two factors, reason and experience, we have the bases of knowledge. *Belief is the outcome of experience* (*l*)—a product of the three primitive functions of mind: it is empirical knowledge with which the mind cannot rest satisfied, and thus arises “the demand for a higher kind of knowledge to which experience is not adequate” (*m*). *Faith is the outcome of reason*—a product of reason and conscience working upon the fruits of experience, the culmination of reason in search for the good the

(*h*) Josiah Boyce, Ph.D., Harvard, “The Spirit of Modern Philosophy,” p. 15.

(*i*) Caird’s “Essays,” Vol. II, 463, 451–5; Robertson, “Philosophy,” 97, 187, 189, 79, 85.

(*k*) *Ibid.*, 22–3, 97, 99, 188, 190.

(*l*) *Ibid.*, 89–95; Caird’s “Essays,” Vol. II, 510, 465–6.

(*m*) *Ibid.*, 429, 439, 533.

beautiful and the true, the unification of subject and object in that self-consciousness which is the only reality (*n*). Faith, then, is reasoned belief founded on experience and, on that account, is the nearest approach to certainty (short of ideas demonstratively certain) on any subject which can be arrived at in this life (*o*). One may say, "The sun will rise to-morrow": as an induction from experience, this is an expectation and belief which we cannot verify; but, as a deduction from reason and experience, we reach thereby a law of nature which is an article of scientific faith (*p*). It may be said then that, by faith in the results of reason and experience, we attain to knowledge.

(*n*) Caird's "Essays," Vol. II, 530; Robertson, "Philosophy," 179, 181-2; "Psychology," 213; Lodge, "Life and Matter," 98, 81, 199; Dr. Jas. Ward, "Naturalism and Agnosticism," Vol. II, 221-5.

(*o*) Hebrews, xi. 1; Galatians, iii. 2; v. 22.

(*p*) Robertson, "Philosophy," 93-6, 355, 310, 344.

## IV

WE come now to consider what is the nature of that control which, it is generally admitted (*q*), mind exercises over the bodily activities and which determines those activities. If the previous analysis of mind, from a psychological and a philosophical point of view, be correct, it will be evident that, in so far as our lower or animal faculties are concerned, freedom of choice can scarcely be said to exist apart from the influence of environment and the promptings of instinct and appetite; and that it is in the control of these propensities and inclinations that the higher faculties of the mind proceed towards the exercise of free will in choosing what is becoming and good and true (*r*). It is by means of knowledge that we are able to exercise that choice. But, behind this, there is the larger question—how does life mind or will come to exert guidance and control over matter? (*s*) It is on an answer to this question

(*q*) "Life and Matter," 132, 134, 157; Meroier's "Crim. Responsibility," 185, 187, 193-8.

(*r*) Ibid., 173-8, 199; Caird's "Essays," Vol. II, 449-51; Sully, "The Human Mind," Vol. II, 122-3, 86; Robertson, "Philosophy," 181-2.

(*s*) Ibid., 132-4, 156-8, 160, 164-71, 171-3; Caird's "Essays," Vol. II, 487, 468, 502, 452; Sully, "The Human Mind," Vol. II, 212-13.

that we shall have to rely for a fuller understanding of that freedom of the will on which the notion of moral responsibility rests.

Sir Oliver Lodge, in his remarks on "fundamental entities" (*t*), places "life" or "mind" doubtfully in that category. But if life and mind have an existence independent of matter (*u*), and if matter be the manifestation of mind (*x*), then mind must transcend matter and be the primal entity—the only reality. He further maintains "that life is not a form of energy," but "exerts guidance and control on the energy which already here exists" (*y*). True; but whence does this *guiding principle* emanate: if mind without (physical) energy controls energy, whence does this control spring? If mind can guide and control energy "by suitable adjustment of existing energy" (*z*), without exerting on its own account force or energy, how do these transmutations have their origin? They must have their origin in the guiding principle, and it is not enough to say that there is interaction of opposite forces, or that "guidance of matter can be affected by a passive exertion of force without doing work" (*a*). This is no answer to the question, how mind or will acts on matter; and to the further

(*t*) "Life and Matter," 103-5.

(*u*) Ibid., 108-9, 112, 115, 116, 117.

(*x*) Ibid., 108, 112, 120, 123, 136-7; Robertson, "Philosophy," 91, 179; Caird's "Essays," Vol. I, 246; Vol. II, 301, 436, 470, 531, 534; 521, 530.

(*y*) "Life and Matter," 133-5, 164-6, 168-71.

(*z*) Ibid., 158.

(*a*) Ibid., 165, 167.

question, what makes it occur? "The whole effort of civilisation would be futile if we could not guide the powers of nature. The powers are there, else we should be helpless; but life and mind are outside these powers, and, by pre-arranging their field of action, can direct them along an organised course" (b). We have, then, life and mind directing the powers of nature; but we have seen that the highest manifestations of life and mind are subject to control by the higher faculties; and the guiding principle that we are in search of will be found in spiritual control (c).

If it be true that life and mind guide and control matter and energy, and that mind be manifest in matter, then it would appear that mind transcends matter (d), and may thus bring itself into relation with it: "a conscious being is a *universal* centre of relation; there is nothing which he, as conscious, cannot make part of his own life" (e). But matter is endowed with energy (f); nature is essentially *not* "dead matter": the elements, it is said, are undergoing spontaneous changes. "The energy given out in these changes was nearly a million times greater than any other change that was known, and

(b) "Life and Matter," 171, 168-71, 171-3; Robertson, "Psychology," 224, 225, 226.

(c) "Life and Matter," 171, 171-3; Caird's "Essays," Vol. II, 531; Robertson, "Psychology," 225, 224-6.

(d) "Life and Matter," 108, 116, 123; Caird's "Essays," Vol. II, 431, 511, 513-14, 528-30, 469-70, 530-1.

(e) *Ibid.*, 529.

(f) *Ibid.*, 301, 522-6, 510, 468, 531, 532-4; "Life and Matter," 117, 121-2.

it was probable that similar changes occurred at a slower rate in ordinary matter" (*g*). From what is becoming known of the so-called radio-active elements, one may imagine the atoms of the several elementary substances to be endowed with units of energy of greatly differing powers. But, whence does this endowment of matter with energy come? If energy be inherent in matter, and matter be the manifestation of mind, then energy must be manifest in mind; that is to say, we may take the manifestation of energy in respect of matter to be explainable in terms of mind as its source (*h*). There is, then, a "spiritual energy which reacts upon nature" (*i*), by which the mechanical energy of nature may be guided and controlled (*k*).

We have now reached a point from which we may "get further towards bringing nerves and consciousness together" (*l*): as the mind acts on matter, so will matter through the nerves and nerve centres react on mind. "We cannot move without having passive sensations along with the movement; we cannot receive passively the sensations that enter into our apprehension of objects without exerting actual movements" (*m*). "It is *prima facie* certain

(*g*) Lecture on "Elements which are changing," delivered by Mr. Frederick Soddy at Glasgow University, reported in *Glasgow Herald* newspaper, 13th February, 1906, p. 9.

(*h*) Caird's "Essays," Vol. II, 469-70.

(*i*) Ibid., 531, 507, 511, 528, 451, 431, 466.

(*k*) "Life and Matter," 160, 171-3.

(*l*) Sully, "The Human Mind," Vol. II, 212, 222-3, 287; Robertson, "Philosophy," 224, 265-6, 337-8; Caird's "Essays," Vol. II, 468, 470.

(*m*) Robertson, "Philosophy," 337-8.



that within limits I determine the course of external things, and that this within limits determines me" (*n*). The natural tendency in man, therefore, is to be guided mechanically along the path of his environment—his natural faculties giving him little room for choice; but the natural and the spiritual in normal man are inseparably united, and, in the development of the spiritual, man becomes self-conscious and self-determined (*o*). We have already seen the essential distinction between the natural and the spiritual to consist in the power of acquiring knowledge; and that it is in the unification of reason and experience in knowledge (*p*) that man rises to the freedom of the spirit.

We are now prepared to take one step farther in the solution of the puzzle involved in the control of life or mind over matter (*q*); for that is the position into which the question of Responsibility ultimately resolves itself. It is by the directive power of knowledge, the generalised result of reason and experience, that mind assumes the guidance and control of matter and energy—by means of which we perform "work" (*r*). By the term "work" we understand the effective exertion of energy, physical or mental; but, in popular parlance, it is frequently used as synonymous with manual labour; and, in

(*n*) "Naturalism and Agnosticism," Vol. II, 238, 237-9; Caird's "Essays," Vol. II, 524, 451, 447, 446-51.

(*o*) Ibid., 466-8, 451, 524, 531-2.

(*p*) Ibid., 465-6; Erdmann, "History of Philosophy," Vol. II, 439, 689, 691, 691-2, 699-700; Vol. III, 161-2, 300, 307, 314, 325.

(*q*) "Life and Matter," 168-71.

(*r*) Ibid., 165-6.

this mechanical sense, it forms the fallacious basis of "use-value" and labour-hours (*s*) upon which the modern doctrines of subversive socialism have mainly been built up. Manual labour, in this sense of manipulation of mass, is essentially mechanical, and cannot of itself be directive or economically productive.

It has been shown that faith is the accompaniment of knowledge, that knowledge without faith is bereft of reality (*t*). The prevalent idea regarding faith is, that it pertains to the transcendental and is exercised on matters which are beyond all knowledge, but the endeavour has been made to show that faith is as intimately connected with science as it is with religion—that not one step can be taken in the foundation of scientific knowledge without the faith which reason and experience confer. It is through faith in knowledge, the assurance "that faith, in the exceeding grandeur of reality, shall not be confounded" (*u*), that mind transcends matter and can mould it to its own designs (*x*). Faith, reason, and conscience are seen at their simplest and best in childhood (*y*). Let us contemplate the process of development in the child-mind (*z*). At birth an

(*s*) Karl Marx, "Capital," Engel's Ed., Vol. I, 5, 11, 19, 20, 29; Vol. II, Part VI, Ch. XIX.

(*t*) Caird's "Essays," Vol. II, 419, 517, 530-1; "Life and Matter," 94, 96, 98, 153.

(*u*) "Life and Matter," 98, 108, 116, 123.

(*x*) St. Matthew's Gospel, xvii. 20.

(*y*) St. Luke, xviii. 17.

(*z*) Robertson, "Psychology," 52, 66, 50, 65, 188, 203, 113, 229, 224-5; 237-8; "Philosophy," 147, 150, 174, 149; Caird's "Essays," Vol. II, 489, 491; 452, 466-73.

infant can be said to possess power of movement or adaptive activity scarcely in excess of that possessed by plant life (*a*). To account for the development and growth of mind, a theory of Spontaneous Activity has been advanced (*b*); and Bain has virtually to admit (*c*) the existence of mind as a separate entity, apart from the action of the brain and nerves (*d*). It is this separate entity, called mind; which is the source of all directive energy and activity — “the principle through which all things are and are understood” (*e*). We see it particularly active during childhood in the effort to understand and classify the experiences which crowd upon the attention: who has not noticed the eager pursuit after truth of the unfolding infantile intelligence, the marked distinction drawn between the real and the imaginative, the profundity of the childlike reasoning and questioning, and the simple faith in knowledge as that which they have come to know as known to others? (*f*) It is this simple faith in what it has come to know that is the distinguishing feature of childhood and the growth of its activities: it is the spring of action, that which sets its energies to work (*g*). “Children cannot

(*a*) Robertson, “Psychology,” 225–6, 230, 236, 240, 242.

(*b*) Ibid., 48, 50, 52, 56, 224–6; Bain, “Mental and Moral Science,” 14, 78, 80, 89, 322, 342, 403.

(*c*) Ibid., 90, 200, 342.

(*d*) H. Charlton Bastian, M.D., “The Brain as an Organ of Mind,” 141–6.

(*e*) Caird’s “Essays,” Vol. II, 489.

(*f*) Robertson, “Philosophy,” 97–8, 116, 126–9, 149, 152–3, 311–16, 337–8, 357; Caird’s “Essays,” Vol. II, 429, 431, 505, 507.

(*g*) St. Luke, xviii. 17; St. Matthew, xvii, 20.

learn too early that personal faith is the basis of action." (*h*)

If what has been said is correct: it is knowledge which is the governing principle of a reasonable being; it is faith in that knowledge which gives the power of action; we are prepared to act on knowledge, and it is faith which gives the power (*i*). Many of our actions, no doubt, are regulated by belief, or a feeling of probability (*k*); but these actions are not distinguishable from those of the lower animals: "the difference between belief and knowledge depends on the possibility of verification" (*l*). There is another difference between belief and knowledge: the one is actuated by way only of intellection, feeling, and conation; the other leads to action under control of the reason, the conscience and the will (*m*).

Now, if faith in knowledge be a reality (*n*), capable of being transformed into action, have we not within the compass of mind that "spiritual energy which reacts upon nature" (*o*) as the manifestation of reason, and as subject to its control? In exhibition of this truth faith gives utterance, "If Thou wilt, Thou canst": and we have a presentation of the

(*h*) *Daily Mail*, 3rd May, 1906, p. 6. (Leading article—quotation from an American Writer.)

(*i*) Robertson, "Philosophy," 86-9, 93-6; Sully, "Human Mind," Vol. II, 287-92, 223, 211-12; Caird's "Essays," Vol. II, 530-2.

(*k*) Robertson, "Philosophy," 89-93.

(*l*) *Ibid.*, 93.

(*m*) *Ibid.*, 89, 90, 181-2; Robertson, "Psychology," 222-3.

(*n*) Robertson, "Philosophy," 91, 179.

(*o*) Caird's "Essays," Vol. II, 531, 452, 419, 469-70.

power of mind over matter in answer, "I will" (*p*). The beginnings of the will are seen in the control of bodily movement, prompted by feeling and intellection (*q*): intellection unites feeling and conation, and "all terms of intellection imply activity": "the problem, then, of will or volition is to forge a link of some kind between activity and feeling"; for "there is nothing more characteristic about the beginning of life than that we are not able at will to put forth *adaptive* activity in relation to feeling." The primitive act of a child is spontaneous, that of crying; then comes the instinctive or adaptive act of taking in food, and finally the conscious repetition of these acts under laws of association and memory: in these acts we perceive the instinctive germs of the will. It has already been shown how in childhood the spiritual and moral faculties are actively at work, assimilating the teachings of experience as they crowd in upon the expanding intelligence; and how it is the simple faith in what the child has come to know as known to others, that sets its energies at work. It is knowledge, then, that forges a link between activity and feeling; and faith is the spiritual principle which in response gives power to say "I will" (*r*).

We have now reached the position: that in all matters of a spiritual or moral nature, which concern our reason and conscience and which do not concern

(*p*) St. Matthew, viii. 2, 3.

(*q*) Robertson, "Psychology," 239, 25, 240, 236, 225-6, 240-2, 224-7, 230, 235-6; Bain's "Mental and Moral Science," 79-81.

(*r*) Robertson, "Philosophy," 144, 146; "Psychology," 236, 240.

merely our animal nature, all our activities are centred upon our knowledge. If faith in knowledge enables us to act in accordance with the higher emotions and the will, we are so far self-determined; but knowledge, in this sense, is that which is true. Your reason and your conscience enable you to know the truth, and "the truth shall make you free" (s). In the inevitable conflict between desire and will, between the animal and the moral faculties of man (t), we are deciding for ourselves whether under the lower law of necessity we do not choose but follow the dictates of our animal propensities, or whether under the higher law of liberty we choose to follow the dictates of reason and conscience (u). All men may not attain to this freedom, but all men are subject to law; all men in the normal state may be made to understand the meaning of law and the inevitable consequences of its breach: "We are said to *recognise* beauty, truth, and right" (x).

(s) Robertson, "Psychology," 214, 216, 213, 220, 240; "Philosophy," 188, 190, 206, 192, 199; Caird's "Essays," Vol. II, 417-9, 505, 463; St. John, viii. 32; Romans, viii. 2; vii. 15, 25.

(t) Robertson, "Psychology," 236-7, 241-2.

(u) Bain's "Mental and Moral Science," 448, 396-406; Caird's "Essays," Vol. II, 376, 417, 421; Mill, "Logic," 6th Ed., 1865, Vol. I, 576, 578, Chap. XII.; Sully, "The Human Mind," Vol. II, 292, 364.

(x) Robertson, "Psychology," 213; "Philosophy," 181-2, 127-8, 182; Sully, "The Human Mind," Vol. II, 122-3, 86.

## V

IN treating of the mind as ranged under lower and higher faculties, corresponding to the natural and spiritual consciousness, we have endeavoured to show mind in its cognitive functions operating on the lower plane by way of intellection feeling and conation, and on the higher plane by way of reason of moral and æsthetic sentiment and of will (*y*). We must now proceed to an analysis of the states of consciousness, in so far as they affect our activity, in respect of the various elements of the mind (*z*).

If the division of the mind into states which correspond to lower and higher faculties respectively of the soul and of the spirit, be a true one (*a*), we shall find that a corresponding distinction will be apparent in the character of our actions according to the source from which they spring—whether they be prompted by bodily wants and experiences or be

(*y*) Sully, "The Human Mind," Vol. II, 124, 133, 155, 327.

(*z*) Robertson, "Psychology," 219-26, 227-36, 237-46, 247-51; Sully, "The Human Mind," Vol. II, 172, 179, 181, 196, 209, 224, 234, 286, 292.

(*a*) Robertson, "Philosophy," 208-9, 221, 310; Myers, "Human Personality," Vol. I, 14, 15, 72, 102, 118, 97, 157, 169, 193, 224, 226; Vol. II, 1, 81, 193, 197, etc.; St. Matthew, xxvi. 38; St. Luke, xxiii. 46; Hebrews, iv. 12,

controlled by reason and moral feeling (*b*). The distinction may be expressed in an intelligible form, by saying that activity may be induced either by action *of* feeling or by action *for* feeling (*c*): in the one case sense-feeling is the predominant element; in the other case, the higher emotions come after and are excited by intellectual elements. Impulse is transformed into rational motive (*d*), conflict of impulse into control (*e*),—the opposition of a lower to a higher “gives place to a new and larger consciousness of a united self” (*f*).

In treating of the phenomena of mental and bodily activity, we have to do with conation and volition (*g*). In consciousness there will always be found an element of feeling, an element of intellection, and an element of will (*h*). Now, if it be true that “you will always find an element of feeling involved in conation, together with intellectual representation (*i*),” it will follow that the distinction

(*b*) Robertson, “Psychology,” 219, 222, 227, 237, 238-9, 241, 247; “Philosophy,” 186, 194, 144, 191, 195, 197.

(*c*) Bain, “Mental and Moral Science,” 218, 347; Robertson, “Psychology,” 240, 230, 250; “Philosophy,” p. 88; Sully, “The Human Mind,” Vol. I, 66, 69; Vol. II, 180-1, 190, 197, 222, 235-41, 258, 275.

(*d*) Sully, “The Human Mind,” Vol. II, 239, 246, 258, 264, 263-6.

(*e*) Ibid., 246, 253, 263-5.

(*f*) Ibid., 264, 286, 292.

(*g*) Robertson, “Psychology,” 84, 86-7, 219-22; Sully, “The Human Mind,” Vol. II, 172-3, 179, 195; Bain, “Mental and Moral Science,” 318.

(*h*) Robertson, “Psychology,” 23, 25, 96, 47, 219-20; Sully, “The Human Mind,” Vol. I, 68-9.

(*i*) Robertson, “Psychology,” 220, 35, 42, 44,



commonly drawn between voluntary and involuntary action is one of degree only (*k*); and the like must be said of conscious and unconscious activity. "The difference between a reflex action and a simple conscious act is only one of degree of complexity (*l*)."  
When, therefore, it is said by the same author, that "reflex action is like spontaneous action, not only involuntary but also unconscious (*m*)," one must take this to be qualified by the previous statement, and to be explainable in terms of the caution, to "be not misled by the seemingly sharp contradiction between conscious and unconscious experience: the fact is . . . there are all degrees of consciousness from the fully conscious down to the sub-conscious (*n*)."  
When, therefore, Professor Sully, in discussing the range of conative phenomena (*o*), lays it down as certain, that "no actions of the organism which are carried out *unconsciously* can fall under the head of conation," the correctness of the statement will depend, not only on the definition which you may give to "mind" (*p*) but also, on the correlation which you may conceive to subsist between body and soul on the one hand and spirit on the other. The question may be presented in this form: can a sentient being experience bodily movement apart from any mental concomitant; does activity always

(*k*) Robertson, "Psychology," 43, 35, 42, 44, 47, 41, 227.

(*l*) Ibid., 43.

(*m*) Ibid., 227.

(*n*) Ibid., 44, 149, 260, 258.

(*o*) "The Human Mind," Vol. II, 172-3.

(*p*) Robertson, "Psychology," 256, 261, 259, 7, 8, 15, 138-9, 185, 187, 193, 56, 188.

imply an element of conation ; is there such a thing as random movement of the living organism ? To answer these questions, we must take into consideration all the forms of activity which are peculiar to the human system (*q*). At one end of the scale, we find a series of movements which have been described as mechanical, but which are really controlled by feeling ; and, at the other end, we have a range of action in which the developed will, in conjunction with reason and moral sentiment, exercises control (*r*). There is a measure of apparent uncertainty in action induced by feeling ; for, in perception, besides "physical conditions over which we have no control," there are psychological conditions which depend on the attention which we give to the sense-impression or feeling (*s*). It is apparent that where action is consequent on the influence exerted by sense-impression or suggestion, the mind, however apparently free to act, is determined by laws no higher than those governing the animal organisation. If what has previously been said regarding the interaction of mind and matter be correct, there is the highest degree of probability for the assumption that the so-called spontaneous random or automatic movements (*t*) which are common to animal life do not occur without the

(*q*) Robertson, "Psychology," 222, 224, 227, 230, 232, 237, 240 ; Sully, "The Human Mind," Vol. II, 181, 182, 184, 189, 195.

(*r*) Robertson, "Psychology," 232, 237, 240, 241 ; Sully, "The Human Mind," 235, 192, 17, 185, 188.

(*s*) Robertson, "Psychology," 146-54.

(*t*) Ibid., 222, 224, 227, 230, 232, 261, 34 ; Sully, "The Human Mind," Vol. II, 181, 184.

initiation of some mental impress ; that if it be true in fact, to say, that "with every psychosis is concomitant a neurosis," it should be equally true to say, that with every neurosis there is concomitant a psychosis of the living subject (*u*).

The consideration of the forms of activity, generally classed under the heads of voluntary and involuntary movement, has led us in the first place to distinguish between mind and consciousness, and in the second place to recognise varying degrees of consciousness (*x*): "mind . . . and consciousness . . . are not at all commensurate terms" (*y*); and "activity may go on in the mind without being consciously recognised; there is sub-conscious, there may be unconscious, mental activity" (*z*); all forms of activity of the human system, involuntary or voluntary, "all are covered by the term 'conation'" (*a*).

In treating, then, of outward acts or manifestations of the will which may be productive of legal consequences (*b*), it is important to observe, that the law may have to take cognizance of acts ranging through all degrees of consciousness, voluntary or involuntary; and this becomes apparent when we consider how readily voluntary action may pass into involuntary action (*c*). Actions originally voluntary

(*u*) Robertson, "Psychology," 35, 41, 222.

(*x*) Ibid., 223, 256, 261, 149, 40, 42, 258.

(*y*) Ibid., 256, 261.

(*z*) Ibid., 149.

(*a*) Ibid., 222.

(*b*) Holland, "Jurisprudence," Chap. VIII.

(*c*) Robertson, "Psychology," 223-4.

may become involuntary through force of habit or by lack of attention (*d*), and may thus very easily pass from conscious to unconscious or sub-conscious states (*e*). But, so far as accountability for conduct is concerned, it is generally held to be with acts consciously performed that the law has to do (*f*).

Having so far traced these "lower and higher forms of psychosis" (*g*) through intellectual and active processes, we now turn to the corresponding stages of development which may be observed in the case of feeling. Here again we shall find the distinction between the lower and the higher properties of the mind to be clearly marked (*h*). Marking off, first of all, the sense-feelings from the emotions—that is to say, the "bodily" from the "mental" experiences; we come to a classification of emotive states in which the purely animal reactions of joy and grief, together with the more specialised instinctive animal reactions, may be readily distinguished from the higher human feelings which have their final development in the moral and religious sentiment (*i*). Even as we have seen reason and self-consciousness come in to direct the processes of simple intellection, and will under the direction of rational motive to control the promptings

(*d*) Robertson, "Psychology," 232, 247.

(*e*) Sully, "The Human Mind," Vol. I, 74-5.

(*f*) *Law Quarterly Review*, Vol. XVIII, No. 69, p. 26. Article on "Lunacy in Relation to Contract Tort and Crime."

(*g*) Sully, "The Human Mind," Vol. I, 69, 70, 74.

(*h*) *Ibid.*, Vol. II, 46-7, 47, 56, 82-7, 88, 90, 106, 122, 124, 133, 155, 167.

(*i*) *Ibid.*, 84-6, 106, 122, 155, 169.

of conative impulse, so we now see conscience as the outcome of moral consciousness come in to govern the ordinary sense-feelings and emotions (*k*).

The conditions, under which Freedom or Free Will can be exercised, become now at once apparent (*l*). We have seen that man, in respect of his lower faculties, is under a law of necessity—the law of nature; but that, in respect of his higher faculties, he may place himself under a higher law—that of his spiritual consciousness, whereby he transcends the law of nature: “behind the freedom that breaks the bonds of nature and necessity, we find a divine necessity, in union with which alone man can be truly free” (*m*). In the exercise of reason and conscience, man is lifted up “into a wider consciousness of which his mind and will may become the organ,” and reaches “that freedom of spirit which counts all the burdens of others its own” (*n*). To be free is to be in touch with the Infinite: we may obtain freedom here only by helping others to be free—in the declared will of God, “Thou shalt love thy neighbour as thyself” (*o*). It is in this spirit that man must proceed before he is qualified to mete out responsibility and punishment. In a rightly

(*k*) Sully, “The Human Mind,” Vol. I, 434, 457, 475; Vol. II, 238–9, 264, 160, 165–6, 168–9, 46–7, 286–7, 292, 266, 268, 271, 274.

(*l*) Caird, “The Critical Philosophy of Immanuel Kant,” Vol. II, 241–75, 317, 377, 419, 620–9; Sully, “The Human Mind,” Vol. II, 286, 292, 360; Robertson, “Philosophy,” 136, 192, 353.

(*m*) Caird, “The Critical Philosophy of Kant,” Vol. II, 629.

(*n*) *Ibid.*, 620–5.

(*o*) St. Matthew, xxii. 39; Romans, xiii. 9; Galatians, v. 14; St. James, ii. 8.

organised society, no one can be justly considered solely responsible for his evil tendencies(*p*); for, while evil exists in a community, there must be contributing circumstances for which all more or less are responsible. We have already seen how, under an adequate perception of the essential properties of law and the consequences of its breach, the State must in every case be held ultimately responsible for its due observance: and, when we come to see how great are the variations of different minds in respect of stages of development and of psychical capacity (*q*), and how it is by the development of the higher faculties alone that a blind necessity of following the instinctive promptings of the animal nature can give place to the dictates of reason and morality in the consideration of self and others, we shall come to see that the question of Responsibility is not to be decided simply in the award or withholding of punishment, but carries with it far-reaching considerations of social amelioration—the raising of those that are cast down.

We have now to contemplate man as the possessor of a mind constituted of lower and higher faculties, which correspond to the trinity in unity of soul and body on the one side and of spirit on the other. When the growth of mind under this unity is disturbed, either by the arrest of development or disease on the one side or by eccentric development or alien possession on the other, the state is abnormal (*r*).

(*p*) Caird, "The Critical Philosophy of Kant," 622, 620, 622-5

(*q*) Sully, "The Human Mind," Vol. II, 299, 302,

(*r*) Ibid., 299-301.

For the complete explanation of an abnormal state of mind we shall have to look in one or other of two directions—when on the one hand the brain as the organ of the mind is either defective or diseased, or when on the other hand there is a cleavage of the personality, and morbid or alien influences have taken possession (*s*). The tests which we shall have to apply in each case are different: in the former case, the test of knowledge will be sufficient; in the latter case, the only effective test will be that of the power of control (*t*). When we apply the test of knowledge, we must understand what knowledge in this regard implies—it implies “that knowledge which is valid for the consciousness of all (*u*),” in the possession of which there is freedom to choose between the right and the wrong: when we apply the test of the power of control, we must understand this to involve that guidance and control of mind over matter, that spiritual control of the higher over the lower faculties, which leads to action under the guidance of the reason, the conscience and the will. In these tests thus applied, we should discover the workings of a fully responsible and developed type of mind; but this “is an ideal never perfectly realised” (*x*): and we must regard man as in a condition practically of

(*s*) Myers, “Human Personality,” Vol. I, 40-1, 51, 59, 177; Mercier, “Criminal Responsibility,” 131-2, 136, 138-40.

(*t*) Stephen, “History of the Criminal Law,” Vol. II, Chap. IX; “Digest of the Criminal Law,” Article XXVII; Mercier, “Criminal Responsibility,” 182, 184-5, 193-5.

(*u*) Robertson, “Philosophy,” 97.

(*x*) Sully, “The Human Mind,” Vol. II, 299.

divided responsibility, in which the community must be content to bear a share of the burden of the individual (*y*). We must be prepared, therefore, to contemplate Responsibility as essentially a question of degree, and to recognise that to attempt the imposition of any hard and fast line of separation between responsibility and irresponsibility is futile (*z*): all that can be done is to impose certain rough and ready tests which may be found practically useful.

There are three well understood states of the mind which have the tendency to produce a greater or less incapacity for taking a rational view of conduct—these are negligence, degeneracy (depravity) and insanity, showing downward grades of departure from the normal type of mind. We shall find these different grades of departure from the normal exemplified in the commission of wrongful acts.

It appears to be practicable to treat of insanity under two main divisions (*a*)—those characterised respectively by dementia and by mania; for, although delusion may be found to permeate nearly all cases of insanity that appear before the Courts, there seems to be a clear distinction between the alternating phases of delusion to be found in most cases of disease of the brain and those *idées fixes* which are characteristic of some cases of possession (*b*). The distinction seems to be recognised by usage, in

(*y*) Caird, "The Critical Philosophy of Kant," Vol. II, 622-5.

(*z*) Mercier, "Criminal Responsibility," 203; Sully, "The Human Mind," Vol. II, 311.

(*a*) Mercier, "Criminal Responsibility," 97, 191.

(*b*) Ibid., 131-3, 139, 177; Sully, "The Human Mind," Vol. II, 319-22.



popular language, of the terms "unsound mind" on the one hand and "mad" on the other, as representing differing phases of insanity. In order to apply the epithet: in the former case, we look for some disease of the brain, or general decay, to justify its application; but, in the latter case, there can be few men or women who at one time or other have not been led, under "temporary perversions of the feelings and will (c)" unguided by reason and experience, to do something essentially mad: on such a state of things becoming persistent, the man is in a position to become possessed (obsessed). "There are times in all our lives when we do mad things, and wonder afterwards what possessed us." These phases no doubt will frequently be found in combination, as in some forms of epilepsy. It will be found possible, it is conceived, to place the more recondite phases of alleged insanity—moral impulsive emotional—under one or other of these divisions: in that direction, it is thought, lies the solution of some of the difficulties which beset a reconciliation of the differing views of the legal and medical professions on this subject.

We proceed now to make some practical application of the principles here enunciated, in the several departments of contract tort and crime—paying particular attention to the region of abnormality in relation to crime, and discussing again the much discussed subject of the Answers of the Judges to the Questions put to them by the House of Lords in 1843.

(c) Sully, "The Human Mind," Vol. II, 313, 311-13.

## VI

It now remains to apply the principles, embodied in the idea of Responsibility, as they may relate to the individual to the social order and to the State ; and, in so doing, to direct attention under legal forms to the keeping of good faith to the redress of wrongs and to the repression of crime.

We have seen that the springs of action of a responsible being, guided by reason and moral sense (that is, by the strictly human or higher faculties of the mind), are to be found in knowledge exercised by faith : without knowledge and without an abiding faith in the power of knowledge there is not that " perfect equilibrium of the faculties which is represented by the idea of sanity," and a fully responsible being is one who by reason of the faith that is in him has the power of acting upon knowledge.

It is worth while attempting to realise the true import of knowledge—the ultimate principles on which it rests. In the first place, "our knowledge of things is relative or proportioned to" the thinking mind ; and, in the second place, we arrive at it by way of a double process—a perceptible and conscious process, and a latent or sub-conscious process ; the one is a process of learning, and the other of reasoning, and by a combination

of the two we obtain knowledge and understanding. In the one case, by advance of experience, we have a perception of phenomena—phases of the truth; but, in the other, by aid of reason we conceive reality—the truth itself. Let one beware of narrowing the mind, throwing it out of balance, by too exclusive devotion to one subject; it is on a wide foundation alone that knowledge can be based. By dwelling on one subject, the mind becomes fixed within a certain groove of thought so that one phase of truth becomes predominant; thus arises the dominance of the fixed idea which, obtruding itself into all the affairs of life, becomes immutably rooted in the mind (*d*). Specialism itself is seen to be an evil, if carried to excess: the expert, if too exclusively devoted to one subject, will inevitably develop certain faculties at the expense of others: the lower powers of the intellect may be preternaturally expanded, while the higher powers of the reason may be stunted and depressed. Hence arises a materialistic view of life, whence we get all the fads and fancies for improving the condition of humanity by a backward process, in the insanity of Socialism. Collectivist Socialism is the negation of individual responsibility—except to taxation and to a task-master. It is founded on delusion: that, productiveness being constituted by labour, it matters not if the highest intelligence of the country be removed and an inferior intelligence be substituted in the organisation of labour; that the proposition “property is plunder” may be taken as a justification

(*d*) Myers, “Human Responsibility,” Vol. I, 56, 57.

for the confiscation of private property ; that property may be confiscated to the State, and the inducements for its reproduction be removed, yet it may suffer no diminution for distribution. Mr. Haldane has said (e): "The fundamental proposition of what was called Socialism was the denial of the right of private property . . . whoever put forward these views seemed to him to put them forward with a narrow view of the realities of life. The man was a materialist, and no materialist had ever grasped the meaning of humanity or of the universe."

It appears, then, that aberration of the intellectual powers is not confined to those who may ordinarily be described as insane ; but that men, with intellectual power apparently unimpaired, may so submerge and repress the spiritual part of their being that their views of life never reach reality—in the circuit of their mind, there is a dark phase which never sees the light (f). What it is of importance to observe in this connection is, that the mental equipment of such men is, not that of knowledge and its accompaniment sound judgment ; but that they are driven by the nature of the case into narrow lines of thought, so that—should they be accepted by any large following as experts in any branch of learning, say Economics—the results may be disastrous.

We have already seen, that the whole fabric of social order and of the State rests for its stability upon a due sense of the mutual responsibility of its

(e) Speech at Peebles, reported in *Glasgow Herald*, 6th October, 1906, by the Rt. Hon. R. B. Haldane, M.P.

(f) 1 Corinthians, ii. 14 ; xv. 44.

component parts: and, if this be so, the negation of that responsibility would ensure eventually the destruction of the State. Ancient civilisations failed to realise this truth, and they have passed away; modern civilisations are now undergoing the test.

Out of this conception of Responsibility arises a distinction, in the conduct of human affairs, between man's physical or material well-being and his moral or spiritual well-being. In the one case, we shall be guided from the point of view of the psychological basis of responsibility, and, in the other case, from the point of view of its philosophical basis: in the one case, we regard man's social relations mainly from a material standpoint; in the other, from a moral standpoint.

If, in a regard for purely material well-being, the moral and spiritual well-being of the community be lost sight of, one is losing the substance to grasp at the shadow (*g*): in such a case, the political insight of the community must be small indeed and fateful of a decaying State. This consideration becomes most important in the education of children, and in the treatment of those who, having fallen away from right courses, have brought themselves under the Criminal law; and it is most important that the national church, the church of the poor—be it Catholic or Protestant—shall be allowed to carry out its mission in the great cities and to every corner of the land.

We have traced the growth of the fixed idea, and have seen how it may acquire dominance in the

(*g*) St. Matthew, ix. 4; xiii. 13-15.

mind even of a healthy subject—how easily it may deviate either towards what is reasonable and high-minded, or towards what is unreasonable and destructive; but, before we proceed further in the elucidation of the abnormal, we must first make hasty reference to normal legal relations in the region of contract and of tort.

The primitive idea on which all contractual relations are founded is the exercise of good faith: and we find, in the Archaic forms of contract, that these forms are but the evidences of plighted faith; so we find, in the law of contract of modern times, that, besides evidences of intention and of capacity and legality of the object, the main requisite to the formation of contract is that of good faith and a clear understanding between the parties (*h*). Have the parties so pledged themselves one to the other upon the subject-matter of the contract that they have rendered themselves responsible one to the other for duly carrying out the same? Any failure in this good understanding will invalidate the contract—either by way of mistake, misrepresentation, fraud, duress, or undue influence.

Sometimes a question may arise as to the *bonâ fides* of one or other of the parties, and the law may then have to lay down technical rules as tests. One or two illustrations may suffice to show the practical mode of dealing with cases in which the maintenance of good faith may have to be tested.

In contract and in tort, as in other relations of

(*h*) Anson's "Law of Contract," 10th Ed., 1903, 11, 140; "The Doctrine of Consideration," *Law Mag. and Rev.*, Vol. XXVII, No. 324, 272.

life, a man must be held bound by the consequences of his own acts. In these several relations he incurs certain responsibilities: and we have seen that, as the psychological basis of responsibility, we are bound by the quality of the attention which we give to our surroundings. In the formation of contract, therefore, we have to look to what is the outward expression of the will of the parties; and, if by reason of carelessness, that will does not meet in either case with adequate expression, one is in general bound by the outward expression of the intention (*i*).

A more difficult case arises where the quality of attention may be impaired, not by reason of carelessness, but from mental incapacity of one of the parties. The practical test of *bonâ fides* as laid down by English law in such a case (*k*) is apparently that of knowledge of the incapacity by the other party; but it seems also that the incapacity alleged of one of the parties must be such as to render him incapable of understanding what he was about.

A man's rights are limited by corresponding duties towards other members of the State; and the law of tort imposes liability on breaches of duty established by Municipal law. The question in tort is whether the defendant's conduct caused the harm (*l*). Torts may be divided into three classes (*m*):

(*i*) Holland's "Jurisprudence," Ch. VIII, XII, Mistake; *Watkins v. Rymill* (10 Q. B. D. 178); *Scott v. Littledale* (8 El. & Bl. 815).

(*k*) *Imperial Loan Co. v. Stone* (L. R. [1892], 1 Q. B. 599); *Law Quarterly Review*, Vol. XVIII, No. 69, p. 23.

(*l*) "Law of Torts," Bigelow, 2nd Ed., 1903, 44.

(*m*) Bigelow, 14, 24.

(1) those in which the tort consists in a breach of duty committed by wrongful means; (2) those in which the tort consists in a breach of duty absolute; and (3) those in which the tort consists in a breach of duty committed by negligence.

It is to the third class of torts alone to which we need direct attention as bearing on the question of responsibility. The element of negligence in tort consists in such conduct as, by "failure to respond to judgment or conscience," amounts to a breach of duty and eventuates in damage (*n*)—the failure to give that care and skill which it is one's duty to do. Here, then, we have the psychological element of responsibility, which a man must have, in attention to his surroundings; and the philosophical element of responsibility, which a man must have, in attention to the rights of others.

The apportionment of responsibility in the case of several parties contributory to the act or omission complained of (*o*) is a question of evidence rather than of principle. When a wrong has been committed, the cause must be looked for in voluntary acts and not in conditions: there can be but one cause, whether that is to be looked for in the acts of one person or of many.

From a consideration of the conditions of responsibility in the acts of a human being in a normal state of mind, we now proceed to consider the like

(*n*) Bigelow, 307.

(*o*) Ibid., 368; *Scott v. Shepherd* (2 W. Bl. 892); "The *Bernina*" (L. R., 12 P. D. 58, C. A.).



conditions as applied to mental states ranging through various degrees and descriptions of abnormal presentment; and, as in the former case, directing our attention to legal forms in the departments of contract tort and crime, we take up the legal relations of the abnormal in the regions of contract and of tort, leaving for later and separate treatment those relations as they receive illustration in the province of crime.

The deviation from the normal in mental states may be very slight, ranging through various degrees of intensity until it culminates in insanity (*p*). There can, therefore, be no fixed standard of sanity, nor will it be possible to fix on an invariable line of division separating the sane from the insane (*q*). We must, therefore, look for another test of responsibility than that of sanity for practical service.

The fundamental notion of Responsibility, involving duty and moral obligation, is a complex of three ideas—in the possession of a capacity for knowing for choosing and for acting—representing the triple functions of the mind. If any one or other of these functions suffer weakness or impair, there is so far a lack of those qualities which constitute a responsible being. There are, accordingly, degrees of responsibility even as there are degrees of deviation from the normal (*r*). In social and political relations, we see this fact exemplified in

(*p*) Wood Renton, "Law and Practice in Lunacy," 14-20.

(*q*) Mercier, "Criminal Responsibility," 225; *Jenkins v. Morris* (L. R. [1880], 14 Ch. D. 674).

(*r*) Mercier, "Crim. Resp.," 149, 181

the case of public opinion refusing to attach responsibility to the teachings of those whose minds are unevenly balanced.

Sanity then, in the ordinary affairs of life, is the capacity to conform in conduct to the ordinary human standards of reasonableness and self-control. The standards of conduct are such as are observed habitually by the ordinary man; and, in the last resort and in any particular case, are such as will commend themselves to a judge or jury after evidence led. We are thrown back, therefore, on the necessity for an elaboration of practical rules which will guide the Courts in setting up standards of right conduct for application in particular cases. We find, in the history of the development of English law, that, starting with the maxim of the civil law *furiosus autem stipulari non potest*, sets of rules as to the contractual and testamentary capacity and criminal responsibility of lunatics were being evolved in which "there is a steady approximation towards the only uniform test of lunacy which is desirable or possible, viz. 'Was the person whose act is in question able to understand its nature, and to pass a fairly rational judgment on its consequences to himself and others; and, was he a free agent so far as that act was concerned?'" (s)

In the case of Contract (t), the course of development is exceedingly interesting and instructive—rule and exception following one upon another until a right principle is arrived at. The old rule of the

(s) Wood Renton, "Law and Practice in Lunacy," 7, 8.

(t) Ibid., 8-16.

Roman law "is confronted by the no less famous maxim," that 'no man should be allowed to stultify himself by setting up his own incapacity (*u*). This in its turn suffers abatement: and, between the two, the principle is coming to be perceived that, in dealing with the contract (and consequently with any other juristic act) of a lunatic, we should apply the like methods of testing its validity to those that are applied in the case of ordinary persons—was the contract entered into in good faith, was the party chargeable capable of giving his consent in the absence of fraud mistake or other undue influence? (*x*)

From the year 1827 onwards, we observe the elucidation of a new theory. In *Pitt v. Smith* (*y*), the agreement of a person in a state of complete intoxication was set aside on the grounds that "he had not an agreeing mind": and, in a note on this case, "writers on the law of Scotland" are referred to as expressing a similar doctrine—"Persons while in a state of absolute drunkenness, and consequently deprived of the exercise of reason, cannot oblige themselves,—but a lesser degree of drunkenness, which only darkens reason, has not the effect of annulling the contract" (*z*). In *Brown v. Jodrell* (*a*), on an assumpsit for work and labour, the defence of insanity was set up; and Lord Tenterden, C.J., said: "I think that this defence cannot be

(*u*) Wood Renton, "Law and Practice in Lunacy," 7, 8.

(*x*) *Ibid.*, 10-20.

(*y*) 1811, 3 Camp. 33.

(*z*) Erskine, "Inst.," 814-5.

(*a*) 1827, 3 Car. and Payne, 30.

allowed, and that no person can be suffered to stultify himself and to set up his own lunacy as a defence. If indeed it can be shown that the defendant has been imposed upon by the plaintiff, in consequence of his mental imbecility, it might be otherwise, and such a defence might be admitted." In *Moulton v. Camroux* (b), the principle of good faith and *bonâ fide* dealing as the essential test of all contract, is advanced in clearness; and it is declared that, even if a man "was so lunatic or drunk as not to know what he was about, the modern cases show that, when that state of mind was unknown to the other contracting party and no advantage was taken of the lunatic, the defence cannot prevail—especially where the contract was not merely executory but executed in whole or in part and the parties cannot be restored altogether to their original position." In *Matthews v. Baxter* (c) the case of *Gore v. Gibson* (d) is reviewed. In the latter case, the contract of one "in such a state of drunkenness that he did not know what he was doing," when it appeared that the other contracting party knew it, was declared void altogether; but, in the former case, reviewing the language of the judges in *Gore v. Gibson*, the Court decided that the contract of a drunken man was voidable only and not void. In the case of the *Imperial Loan Coy. v. Stone* (e), the development of that department of law, which deals

(b) L. R. [1848], 2 Ex. 487; L. R. [1849], 4 Ex. 17, 19.

(c) L. R. [1873], 8 Ex. 132.

(d) 1845, 13 M. and W. 623.

(e) L. R. [1892], 1 Q. B. 599.

with the contractual capacity of lunatics, has reached its furthest point (*f*). Shortly stated, its effect is to sweep away the tentative distinctions by means of which the judges felt their way towards the illuminating principle of good faith as the essential quality of all contract: it came to be perceived that, in the observance of good faith, the law had provided a test of free agency which might be applied in all cases. In that case, the Court held that "a defendant who seeks to avoid a contract on the ground of his insanity must . . . prove not merely his incapacity, but also the plaintiff's knowledge of that fact" (*g*): and that he must "prove further that the person with whom he contracted knew him to be so insane as not to be capable of understanding what he was about," otherwise "the contract is as binding on him in every respect, whether it is executory or executed, as if he had been sane when he made it" (*h*). In the same case, occasion (*i*) was taken to show what the law had been and how in modern times it came to be relaxed. Setting aside the maxim of the Civil law, which presents insanity under a stereotyped form, the law of England of very old date (*k*) laid down that "no man of full age shall be received in any plea by the law to stultify and disable his own person"; yet, "in certain cases the Crown, and in other cases persons who claimed

(*f*) Wood Renton, "Law and Practice in Lunacy," 12.

(*g*) *Imperial Loan Coy. v. Stone* (L. R. [1892], 1 Q. B. 603); Judgment of Lopes, L.J.

(*h*) *Ibid.*, 601; Judgment of Lord Esher, M.R.

(*i*) *Ibid.*, 601-602; Judgment of Fry, L.J.

(*k*) *Beverley's Case*; 4 Co. Rep., 1236.

under one who was *non compos mentis*, could set up the disability, although the man himself could not," so, in *Moulton v. Camroux* (l) it came to be affirmed that "unsoundness of mind would now be a good defence to an action upon a contract if it could be shown that the defendant was not of capacity to contract, and the plaintiff knew it. It thus appears that there has been grafted on the old rule the exception that the contracts of a person who is *non compos mentis* may be avoided, when his condition can be shown to have been known to the plaintiff." Thus at length we arrive at a clear perception of the fact that, in all essential particulars, the contract of a person not of sound mind may have its validity tested by an application of the same rules which govern the law of contract in general.

In a recent case (m), tried before the Judicial Committee of the Privy Council on appeal from the Supreme Court of Natal, we have a striking instance of the advance made by the law of England, in lunacy cases, over the law of a country (such as that of Natal in South Eastern Africa) which founds itself on the Roman law, where it is declared "that the Roman-Dutch law is not silent upon the question whether a contract made by an insane person is voidable only, for the authorities expressly say that it is absolutely void (n), . . . and in any case" the defendant's "ignorance of the fact" that the plaintiff was not in a fit mental condition for carrying on

(l) L. R. [1848], 2 Ex. 487.

(m) *Molyneux v. Natal Land and Colonization Coy. Limd.*  
(L. R. [1905], A. C. 555).

(n) *Ibid.*, 562-3.

business of any kind, "cannot confer validity on an instrument which was otherwise invalid" (o). Another case (p), referred to by Sir Henry de Villiers in his judgment from which quotation has just been made, was an application to the Privy Council for leave to appeal from a decision of the High Court of Australia, where a power of attorney given to his wife by a husband while of unsound mind was pronounced invalid. The Privy Council refused leave to appeal mainly on grounds of public policy, but further on the ground of seeing "no reason to doubt that the judgment of the High Court is right." The decision of the High Court of Australia seemed to turn on the fact that the wife of the plaintiff knew her husband to be of unsound mind at the date on which he granted to her the power of attorney, that consequently (it was said) the power was void and the deed of transfer upon which the defendant acted was a nullity. In such a state of the facts, the Court seems to have gone back to an old case (q) as an authority for declaring that the juristic act of a person *non compos* is void *ab initio*.

The growth of the modern doctrine, regarding the capacity of the insane to marry, need not be followed out; as in the case of ordinary contracts and in that of testamentary capacity, the same leading features are shown before the final result is arrived at. The pseudo-metaphysical doctrine, of the indivisibility of

(o) *Ibid.*, 564, 569.

(p) *Daily Telegraph Coy. v. McLaughlin* (L. R. [1904], A. C. 776-7, 779-80).

(q) *Thompson v. Leach* (1690, 3 Mod. Rep. 301).

the mental faculties, which controlled the decisions for a time, was finally set aside in the case of *Durham v. Durham* (r), and the importance of the cases which follow turns mainly on the question of undue influence as affecting the contract and status of marriage (s).

In the development of the law, respecting the testamentary capacity of the insane, there are some points which deserve notice (t). In the year 1870, by a judgment of the Court of Queen's Bench, in the case of *Banks v. Goodfellow* (u), the law was settled upon its modern basis; the metaphysical theory enunciated by Lord Brougham in *Waring v. Waring* (x) was discredited, and it may be said that the rules governing the testamentary capacity of the insane were assimilated to those which prevail in the case of contract. The American law, it has been remarked (y), has undergone a similar process of development, and a rule almost identical as to testamentary capacity to that in England may be observed in the laws of some of the American States. In Scotch law, the great case on testamentary capacity is that of *Morrison v. Maclean's Trustees* (z), where the test of capacity as applied to the degree of insanity has regard to the nature of the act and the kind of mental exertion required for it. The consideration of cases in Scots law will be reverted to when we come to deal more particularly with the rules pertaining to criminal responsibility.

(r) 1885, 10 P. D. 32.

(s) Wood Renton, 19-26.

(u) L. R. [1870], 5 Q. B. 549.

(y) Wood Renton, 41-4.

(t) Ibid., 32-63.

(x) 1848, 6 Moo. P. C. 341.

(z) 1862, 24 Dunlop's Rep. 625.



There seems to be some doubt as to the rules which ought to govern the civil responsibility of the insane on the commission of tort. "There can be no doubt that the mere existence of unsoundness of mind does not destroy civil capacity any more than it destroys criminal responsibility" (a). The authorities, so far as they go, seem to waver between a rule which would place a criminal and a civilly culpable act in this respect upon the same footing, and a rule which would give no relief from an action of tort even to one suffering from total mental incapacity. We have a dictum expressive of the former view by the Master of the Rolls, in a decision of the Court of Appeal in 1897 (b); but the dictum remains apparently unsupported by further authority. The more correct view appears to be that lunacy shall be no excuse in an action of trespass, "which tends only to give damages according to hurt or loss" (c), unless indeed there be such sufficient excuse as the law gives effect to in ordinary cases. We thus reach the like principle to that which we have seen evolved in the historical development of the law of contract; and we are able to state in general terms that a lunatic may be held liable in an action of tort, in like manner as a person of sound mind, unless he can show such ground of exemption from civil liability for the act in question as the law in general will allow.

(a) Wood Renton, 64-5.

(b) *Hanbury v. Hanbury* (8 Times L. R. 559).

(c) Wood Renton, 64-5; *Law Quarterly Review*, Vol. XVIII, No. 69, p. 30, note by the Editor.

## VII

PASSING now from the consideration of capacity in relation to civil rights and duties, we proceed to inquire whether and how far a standard of conduct may be set up which shall involve the determination of criminal responsibility (*d*).

It appears to be pretty universally admitted that the vexed question of criminal responsibility is yet far from having received a satisfactory solution: and, this being so, at the outset it occurs to one to inquire how far the method of investigation commonly pursued has been the correct one.

It is now generally admitted: "that there is no such thing as absolute sanity or insanity," and that "the mere proof of insanity . . . does not, in the eyes of the law, destroy the conditions of responsibility and capacity" (*e*). We are here presented

(*d*) In two treatises recently published, dealing in each case with Criminal Responsibility, we accept the views put forth as reflecting pretty accurately the medical and legal opinions on the subject. These are (1) Article in *Jurid. Rev.*, Vol. XVI, by Sir J. Batty Tuke and C. R. A. Howden, and (2) "Criminal Responsibility," by Chas. Mercier, M.B.

(*e*) Sir Frederick Pollock's remarks on *McNaghten's Case*; *Revised Reports*, Preface to Vol. LIX; *Jurid. Rev.*, Vol. XVI, Sir J. Batty Tuke and C. R. A. Howden, "Relation of the Insanities to Criminal Responsibility and Civil Capacity," pp. 12, 254.

with a problem of two dimensions—in the direction of medical authority, to find “what is the essential element which separates insanity from other unfavourable mental conditions(*f*)”; and, in the direction of legal authority, “we have to see how far the conditions which are the results of [this essential element] have destroyed the power to form a correct judgment of the consequences of our acts, and to give effect in action to the judgment which we have formed” (*g*).

First of all, then, we have to arrive at some working theory that will serve to discriminate the mental conditions of the sane from the insane: and, in accomplishing this, we shall already have gone far towards overcoming the difficulties which hitherto have stood in the way of reconciling the answers to be given respectively to the medical and the legal aspects of the problem.‡

We are not left in doubt of the view taken by medical authority in approaching this question. Insanity is treated as a disease disorder or defect, having its seat in the brain, and affecting “the whole individual who is the subject of the disorder.” But, when the medical expert is asked for “a definite account of the course of the symptoms collectively constituting the disease,” he is fain to own that “there is no such course of symptoms” (*h*).

(*f*) Batty Tuke and Howden, “Relation of the Insanities to Criminal Responsibility,” pp. 9, 10.

(*g*) *Ibid.*, p. 15.

(*h*) Mercier, “Criminal Responsibility,” pp. 79, 80, 85, 86, 88.

This position is no doubt satisfactory to the empiricist, who is content with the reflection "that the symptoms of insanity are extraordinarily multiplex": but he can scarcely expect a Court of law to rely upon his powers of observation in the diagnosis of this "disease" until he has arrived at some definite conclusion upon the invariability of its distinguishing features.

Well, "in the first place, we must know clearly what is the nature of the ground on which the law will permit an inquiry into the mental condition; what is the essential element which separates insanity from other unfavourable mental conditions, and distinguishes it from depravity stupidity or eccentricity, from the violent excess of passion or emotion or from the natural decay of old age" (i). We have it stated that "Every one is now agreed as to the nature of this element; no one doubts that all the cases which are properly called insanity result from conditions of physical disease or defect; what was formerly recognised as mental disease is now known to be the effect and symptoms of physical disease . . . caused by the physical defect or disease of the brain" (k).

It may be admitted that, granting medical authority to have substantiated this position, "the vast majority of cases present no difficulty to the skilled physician, nor is there any room for difference of opinion about them." If the matter stood

(i) *Jurid. Rev.*, Vol. XVI; Batty Tuke and Howden, "Relation of Insanities to Criminal Responsibility," pp. 9, 10.

(k) *Ibid.*, pp. 9, 10; 185, 186; 265.

here, there might be an end of controversy between medical and legal opinion upon the subject; but there is an admitted "difficulty of discrimination . . . in certain classes of cases" in determining the limits of insanity (*l*). It is admitted that "cases undoubtedly do arise which are practically insoluble, in which we cannot determine with certainty whether the mental peculiarities are morbid or healthy." But the difficulty does not end here: for "the mere proof of insanity in a given case only affords a necessary preliminary to further investigation. Insanity does not in the eye of the law destroy the conditions of responsibility and capacity" (*m*).

Here, then, is the point at which medical and legal opinions are prone to diverge and be at variance. "The vast majority of cases," which present no difficulty to the skilled physician, are palpably cases of brain disease or defect or decay, and there is very little if "any room for difference of opinion about them." But there are "other classes of cases" in which morbid conditions may or may not be so marked; and we meet with still other "cases in which it is quite uncertain whether the mental phenomena are due to disease at all" (*n*).

We may take it then that, in determining the limits of insanity, we meet at least with a few exceptional cases in regard to which it cannot with

(*l*) *Ibid.*, 11.

(*m*) *Jurid. Rev.*, Vol. XVI, "Relation of Insanities to Criminal Responsibility," p. 12.

(*n*) *Ibid.*, 11, 7.

any assurance be said that physical disease is the essential element which separates them from other unfavourable mental conditions (*o*). This being so, we are at once confronted with the question, if we do not find the differentia of these cases in physical disease, where are we to find it? Before attempting to answer the question, we must turn again to the metaphysical doctrine of the constitution of the mind with which we set out.

The endeavour has been made to describe the human mind as constituted of lower and higher faculties, corresponding generally to those of our animal and human natures respectively. By the interaction of these faculties of body and soul, in the way of experience and reason, our animal and human natures are developed; but man is likewise a spiritual being, and his human nature becomes the subject of spiritual processes. We are familiar with some of these processes in the uprisings of genius and in the illuminations of inspiration commonly associated with beneficent influences; but if there be genius for good there may also be inspiration for evil—serving maleficent ends (*p*). We have, then, to regard the human mind as so constituted that it may be affected either by material or by spiritual influences; and that the higher influence will rule the lower. The human personality is *possessed* by the spirit; and, according as that influence is

(*o*) *Jurid. Rev.*, Vol. XVI, "Relation of Insanities to Criminal Responsibility," pp. 9, 10, 11.

(*p*) Myers, "Human Personality," Vol. I, 56, 91, 111; Vol. II, 115, 260; Lodge, "Faith Allied with Science," 39.

benignant or malign, so shall we have the flight from the heights of goodness and genius or the descent into the depths of depravity and despair. In the one case there is liberty, in the other there is bondage. Sin is disease of the mind—the disease from which insanity grows (*q*). Insanity, then, is allied to genius, in this, that the one is the ascent the other the descent of the spirit.

Here we have a clear issue: medical opinion and legal practice are at variance in determining the limits of insanity in certain classes of cases (*r*) in which it is admittedly doubtful that traces of physical disease can be found; yet medical men in the position of experts seem to base their claim to have questions of insanity treated as a subject “peculiarly their own” (*s*) upon the ground “that all the cases which are properly called insanity” arise from conditions of physical disease. We are thrown back, therefore, upon the more ancient theory of insanity as a mental disease in which physical disease may be an incident (*t*), in the same sense as disease may be an incident of sin and evil conduct; and we are under the necessity of finding, in these other classes of cases in which physical disease is at the least not prominent, some characteristic features which will serve to distinguish them at once from ordinary cases of indifference, negligence, or depravity.

The theory of the law, as laid down by the Judges

(*q*) Sir Oliver Lodge, “The Substance of Faith allied with Science,” 5th Ed., 53, 13, 17, 18, 28, 77, 81, 93.

(*r*) *Jurid. Rev.*, Vol. XVI, p. 11.

(*s*) *Ibid.*, 5, 6, 7, 10.

(*t*) *Ibid.*, 185-6.

in their answers to questions put to them by the House of Lords in 1843 (*u*), makes the extreme test of responsibility (stated shortly) to be the knowledge of right and wrong. There is little reason to doubt that, in the whole class of cases which are attributable strictly to physical disease or decay, the knowledge of right and wrong may be taken to be a fairly satisfactory test of the range of responsibility; so that the medical experts, when they insist on having insanity in the aggregate treated as symptomatic of physical disease and as "properly the subject of medical study," have nothing to complain of in the legal tests as commonly applied. But, when we come to that "large number of insane criminal acts to which exemption from punishment is not accorded by the present rule of law (*x*)" in respect of this knowledge test, what do we find? We find that it is not so much the understanding or intellect, but the feelings or the will that are affected: the understanding is held in a vice, the feelings and will are powerless to resist the impulse of a degenerate spirit. It is apparent at once that here, if we have come upon the limits of responsibility, the medical disease theory equally with the legal knowledge test break down. What have we to put in their place? The medical records of insanity and the legal records of criminality show the recurrence of three well-marked features which may be taken to distinguish this class of cases from the more ordinary cases of

(*u*) *McNaghten's Case* (H. L. [1843]; 10 Cl. & Fin. 200); *Jurid. Rev.*, Vol. XVI, 12, 174.

(*x*) *Ibid.*, 184, 180-7.



insanity, namely, (1) fixity of idea, (2) intensity of feeling, and (3) irresistible impulse—probably all more or less present, but appearing in varying degrees and affecting unequally the three primitive functions of the mind. The conditions are admirably described in the treatise from which passages have already been quoted (*y*): “Criminal acts seem occasionally to be determined by an impulse so sudden that there is absolutely no time for realising the nature of the act and its consequences. In other cases, the act represents the crisis of an ascending movement of feeling or passion which probably in the end wholly excludes from consciousness everything but the immediate motive to action. In some cases, characterised by melancholia for instance, it seems likely enough that the crime is the result of feeling so intense in its nature that it excludes all possible considerations of the consequences of the act. In other cases, we seem to find a state resembling Somnambulism in which the mind is entirely dominated by a certain chain of ideas from which it cannot escape and in other respects is entirely vacant. . . . The principle, from which Hale started on his exposition of the law, was that when there is no free choice of the will there is no crime; and that principle in various forms is too plainly the fundamental assumption of every criminal system to require discussion. But . . . the general principle passed out of sight, because it was too general and looked too philosophical for common

(*y*) Ibid., “Relation of Insanities to Criminal Responsibility,” 182-187, 14, 15; Mercier, “Criminal Responsibility,” 131.

use; the subordinate rule . . . obtained an independent existence and became the ultimate ground of appeal. What we have now to do is to go back to the general principle, and see whether there is not any change of view as to the class of cases which ought to fall under it. . . . It is this practical conception of the power of free action which forms the basis of the criminal law, and the question we have before us is one strictly of fact—whether the only effect of insanity which disables free choice and renders the subject unable to obey the law is incapacity to know the penalty which attaches to the act. . . . But there is nothing in the theory of the law to prevent other elements besides that of knowledge from being taken into consideration. If the will may be wholly overborne by insane feeling or passion, or if deliberation and control be rendered impossible by reason of weakness of faculty or by the over-mastering power of some morbid idea or impulse, the man is quite as unfree as if he were acting under physical compulsion, and there is no reason why the law should not acknowledge the fact. In reality, such cases were not taken into account simply because lawyers did not believe in their existence.”

Taking the passages which have just been quoted as being a fairly accurate description of those classes of cases which form for the most part the debateable ground between legal and medical opinion, it is manifest that here in these cases the evidence is not conspicuous either of the presence of physical disease or of the lack of knowledge: if, then, we are to infer

insanity from such cases, we must seek other tests. What we do perceive in them are symptoms of mental disturbance and lack of control; but, in these respects, they come perilously near of becoming indistinguishable from acts committed under the influence of passion or depravity. The difference between sanity and insanity is after all only one of degree, and, as has already been shown, a strictly normal condition of mind is an ideal not easily realised (*z*); we have thus to reach some lower standard of practical utility which may serve to mark off the limits of responsibility.

We have already seen (*a*), in discussing the psychological and philosophical bases of responsibility, that the human mind is not so constituted as to be wholly self-determining—that, as regards its lower faculties, it will naturally follow its instincts and inclinations; but that, in respect of its higher faculties, we have to seek that self-conscious unity in which responsibility has its seat. Every man is presumed to possess “that *libertas arbitrii* . . . which is the primary assumption of all theories of legal responsibility” (*b*), until the contrary be proved. The difficulty of proving the absence of responsibility for one’s actions, in many cases that come before the Courts, is undoubtedly due to the fact that insanity seems invariably to have been taken by medical men and lawyers alike to be the result of physical

(*z*) *Jurid. Rev.*, Vol. XVI, 5, 11; 254, 265; 9, 17; Sully, “The Human Mind,” Vol. II, 299, 302, 310–11.

(*a*) See pp. 13–17.

(*b*) *Jurid. Rev.*, Vol. XVI, 15, 262.

disease; and, in cases where the medical expert fails to trace any symptoms of disease apart from the alleged insanity, he should not be surprised when the Court does treat his evidence with a certain amount of incredulity. If this be so, the remedy lies in a frank acknowledgment of the fact that brain disease comes in merely as an incident of insanity, and that in certain varieties of cases, mental disorder apart from physical causes is all that can be shown to exist (c).

We have seen that in these difficult sorts of cases (d), the symptoms of mental disorder are frequently very marked, while signs of disease or evidences of lack of knowledge (if there be any) have to be given a wide interpretation (e). We see on the other hand that, in a great majority of cases (f) where disease is the distinguishing feature, there is no difficulty of proving insanity, either on the point of knowledge or of general incapacity. If these observations be well grounded, they seem to show that there are two distinct classes of cases which correspond to two distinct sources of origin; and that insanity may arise either from deterioration of the lower faculties on the one hand, or from disorder of the higher faculties on the other. In place, then, of the early division of insanity into mania and melancholia, or into mania melancholia

(c) *Jurid. Rev.*, XVI, 7, 9.

(d) *Ibid.*, 11, 182, 183, 185; Mercier, "Criminal Responsibility," 128, 133, 136, 139, 161, 162, 119.

(e) *Jurid. Rev.*, Vol. XVI, 180-8.

(f) *Ibid.*, 10-12.

and dementia (*g*), it is conceived that the forms of insanity may be embraced within two great classes having a natural basis in the higher and lower faculties, and which may appropriately be described as dementia and mania respectively. Dementia, which may be taken to be the deterioration or degradation of the human faculties of soul and body, is characterised mainly by the presence of bodily disease or decay and by a corresponding degradation and uncertainty of conduct (*h*); while mania, which may be taken to be distinctly the deterioration or degradation of the spiritual faculties of the mind, is characterised mainly by a corresponding affection of the lower faculties in respect of thought feeling and action (*i*). We have, then, to consider insanity under two aspects, either of which may predominate: there may be impairment of the substance of the brain—eventuating in a “denudation” of the mental faculties, in a degradation of conduct (*h*); or there may be mental disturbance—eventuating in disorders of the intellect and perversions of the feelings and will (*l*). In the one series of cases, the prevailing features are a deterioration and gradual dissolution of the mental structure; in the other series, the prevailing features are persistency, in-

(*g*) Ibid., 7; Mercier, “Criminal Responsibility,” 196, 191 85-9.

(*h*) Ibid., 89-96; 96-101.

(*i*) Ibid., 102-152.

(*k*) Ibid., 99, 114, 143; Sully, “The Human Mind,” Vol. II, 320-22.

(*l*) Mercier, “Criminal Responsibility,” 112, 116, 120; 131, 134, 148; Sully, “The Human Mind,” Vol. II, 322-4.

tensity, and impulsion—in the one case we have degeneration, in the other disintegration.

We may dismiss from further consideration at present that large class of cases in which no difficulty is found in determining the limits of insanity by reason of the prominence of "physical defect or disease of the brain" (*m*), and in which degeneration and decay of the mental faculties are marked features. In that other series of cases, in which the existence of physical disease is more or less doubtful, we want some unfailing and ready test beyond the knowledge of right and wrong (*n*) by which we may draw the line for practical purposes between sanity and insanity. These cases of mental disorder present certain well-defined intellectual and emotional derangements, in which the unity of consciousness is broken up into a divided personality: the man seems to develop a double nature in which appear characteristic delusions with lack of faith, lack of feeling, lack of control (*o*).

The negative of *libertas arbitrii* is *necessitas*: when responsibility ceases, therefore, freedom of choice has given way to necessity, and the practical outcome of this will be shown in altered mental conditions such as have been described. The prevailing feature of these states seems to be that of possession

(*m*) *Jurid. Rev.*, Vol. XVI, 10-12.

(*n*) Meroier, "Criminal Responsibility," 161-6; 180, 185; *Jurid. Rev.*, Vol. XVI, 179-188, 180, 181.

(*o*) Sully, "The Human Mind," Vol. II, 322-24; Myers, "Human Personality," Vol. I, 36, 40, 56; Mercier, "Criminal Responsibility," 131-3, 136, 138; *Jurid. Rev.*, Vol. XVI, 17-19; Lodge, "Faith Allied with Science," 28, 78.

by fixed idea feeling or impulse, and these stakes appear thus to differentiate the states of the sane from the insane by the degree of fixity or intensity with which they are accompanied (*p*). In all such cases, then, the question we have to decide is whether the mind is so possessed by evil influences as to exercise an uncontrollable force upon the actions. This is plainly only a matter of degree, as there is no clear dividing line between the sane and the insane; and, as has been already shown, the limit of responsibility can be determined only upon grounds of expediency and in consideration of existing rules of law and systems of punishment (*q*).

These considerations lead inevitably to the conclusion that there is no reason why, in the treatment of insanity, we should seek out other rules of law than those generally applied in ordinary cases. When one has come to see that cases of insanity, however various may be their phases and their complexities, may always find their counterparts in sane states, and that the differences are those of degree rather than of kind; one may well see that the ordinary rules of law are the only sure guides on questions of responsibility whether of the sane or of the insane. It is difficult to see why, in the case of the insane, knowledge of "the difference between right and wrong" (*r*) should be held sufficient to

(*p*) *Jurid. Rev.*, Vol. XVI, 186, 181-7, 11.

(*q*) *Ibid.*, 184-6, 254, 265; Sir James Fitz-James Stephen, "General View of the Criminal Law," 2nd Ed., 81 (Chap. VI); Lodge, "Faith Allied with Science," 53.

(*r*) *McNaghten's Case*; Answers of the Judges, Nos. 2 and 3; *Jurid. Rev.*, Vol. XVI, 180, 254; 185.

bring the case within the limits of responsibility when, in the case of the sane, we have to consider not only the *intention* but the *will* (s). A man is presumed to have knowledge and control of his actions until the contrary be shown; but, if either knowledge or power of control be proved to have been absent, he is held not to have intended or not to have willed the act with which he has been charged. The strange thing is "that, to establish a defence on the ground of insanity," a different rule of law in theory seems to prevail: that, to establish such a defence, "it must be clearly proved that at the time of the committing of the act the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing. . . ." But, "if the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable" (t). It seems then that, in theory at least, the law as laid down by the Judges in 1843 will admit proof to rebut the presumption of knowledge but not that of power of control as an exculpatory plea in cases of alleged responsibility on the ground of insanity. Power of control is thus inferred from the possession of knowledge, which alone may be rebutted as a plea for irresponsibility, in the case of the insane; while possession of knowledge and

(s) Harris, "Principles of the Criminal Law," Chaps. III, IV; 8th Ed., 10, 12, 16, 19.

(t) *McNaghten's Case*; Answers of the Judges, Nos. 2 and 3; Harris, "Crim. Law," Chap. IV, 16, 19.



power of control are separate presumptions, either of which may be rebutted, in the case of the sane. The presumptions of law, in determining responsibility, are equally valid for the sane and for the insane: "in the case of sane men, we admit no ground as relevant to infer irresponsibility except the absence of knowledge and criminal intention": it is only when we attempt to deal with insanity separately and by special rules that the difficulty comes in (*u*).

This is strongly exemplified in the answers of the Judges to the questions put by the House of Lords in 1843 (*x*) when dealing with cases of what has been called "partial insanity," that is, the case of "persons who labour under . . . partial delusions only and are not in other respects insane." Here it is manifest, the knowledge test does not apply except it be "in respect of one or more particular subjects or persons." In one or more of these respects, according to the hypothesis, the mind of the accused is dominated by *idées fixes* from which it cannot escape (*y*). In such a state of things, it would be idle to inquire whether the accused did not know he was doing what was wrong; and the only pertinent question should be whether the fixed idea by which he was dominated did or did not control his action in respect of the particular subject or person. Here again we are confronted with the perplexity of discovering some point or line of demarcation between the actions of the insane and

(*u*) *Jurid. Rev.*, Vol. XVI, 185, 162; 5.

(*x*) *McNaghten's Case*, Answers Nos. 1 and 4.

(*y*) *Mercier*, "Crim. Resp.," 131, 153-5; 460; *Myers*, "Human Personality," Vol. I, 40-41, 51, 56, 179.

the offences of those actuated by mere depravity. It is true the descent from sanity into insanity may be measurable by degrees: "if we were to take the cases in a mass, we should be obliged to say that they passed imperceptibly into the normal condition of sanity" (z); and, it may be said, "that there is a degree of vice so extreme that of itself it constitutes insanity" (a). Even so, there is no practical guide in such cases for ascertaining the point at which the one merges into the other—where responsibility ceases and irresponsibility comes in. We have seen that, in perhaps the larger series of cases, the presence of physical disease is so marked that there can be no difficulty in attaching insanity to the actions of persons suffering therefrom; but, in that series of cases where morbid conditions may be assumed rather than proved to exist, the attribution of actual disease absolutely fails of being convincing. If we have not disease, what then have we to distinguish these misfortunes of insanity from similar misfortunes of depravity—in which we find an equal fixity of purpose, an equal incorrigibility, an equal resistibility to treatment? The peculiar feature of these states, which seems to mark them off from strikingly similar states of depravity, is to be observed in a cleavage of the "self"—a rupture of the personality: there is in fact possession by a power alien to the ordinary self (b), working it may be on a scrap of the integrate

(z) *Jurid. Rev.*, Vol. XVI, 11.

(a) Mercier, "Crim. Resp.," 195, 203.

(b) Sully, "Human Mind," Vol. II, 323, 324; Mercier, "Crim. Resp.," 138, 139, 140; Myers, "Human Personality," Vol. I, 40-2, 51, 56, 57, 59, 177, 179; 72, 217; 157, 169.

personality. The phenomena of hypnotism familiarise us with artificially induced states of split personality resembling phases of insanity: and numerous cases of multiplex personality have been recorded of so extraordinary a type as to have attracted attention (*c*). Many of these are extreme cases in which disease, no doubt, is a conspicuous feature; but there are others of a like kind in which, beyond congenital tendency or hereditary predisposition, there seems to be nothing to indicate abnormal conditions verging upon insanity until the appearing of some action alien to the general character of the accused (*d*). When, then, there are signs of a duplex personality—what has been called partial insanity, in which a person may be said to labour under partial delusion only and is not in other respects insane, the appropriate question to be asked is not “Does he know?” but “Has he control?”

If these observations be well grounded, it becomes apparent that the answer of the Judges to questions I and IV of the House of Lords in 1843 (*e*) are apt to be misleading. The mistake seems to have been in attempting to make special rules for the insane when the ordinary rules of law should have been followed. To the commission of a criminal act, it is necessary that there should be knowledge and will—each of which is presumed to be present, in an act of itself criminal, until the contrary be proved: and

(*c*) Ibid., Vol. I, appendices to Chap. II, 468–70, 458. *Daily Mail*, 5th April, 1905, p. 4, “Girl’s Ten Minds”: 21st Feb., 1906, p. 9, “Dual Identity.”

(*d*) *Jurid. Rev.*, Vol. XVI, 11, 254, 260–2.

(*e*) *McNaghten’s Case*.

in any case, therefore, absence of knowledge or absence of will (*f*), if proved should result in an acquittal. If it so be that the functioning of the mind is exercised in knowing feeling and willing, and it be admitted that alien possession may take place, it seems likely that this rupture of the self may result in a more or less complete disorganisation of mental processes (*g*), and that the self in the matter of will or action may lose control. In such cases the rules of the Judges, as directing attention to one phase only of mental experience, are restricting consideration to one class only out of two or perhaps three main classes into which insanity may conveniently be divided. Leaving out, then, answers I and IV, the answer of the Judges to questions II and III may be so amplified as to cover all cases, in this manner ". . . and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease [or impairment] of the mind, as not to know the nature and quality of the act he was doing; or, [as to know it but] not [to] know he was doing what was wrong; [or, that he was undergoing such a 'process of mental disorganisation' (*h*) as to have lost the power of control of what he was doing]" (*i*).

(*f*) Harris, "Crim. Law," Ch. IV (8th Ed., p. 16).

(*g*) Mercier, "Crim. Resp.," 134-43, 162.

(*h*) Sully, Vol. II, "Human Mind," 320.

(*i*) Stephen, "Digest of Criminal Law," 4th Ed., Ch. III, p. 20.

In the answer of the Judges to the 4th question in 1843 (*k*), a distinction is made as between the reality or unreality of the facts with respect to which the delusion exists, and an example is given of either alternative: what the judges overlooked is that the only justification for such an act is one of necessity in pursuance of legal right; and that, under the influence of delusion, the necessity may appear equally as great under one set of circumstances as under the other. The proper question to be put under either set of circumstances is the same—was the accused person so controlled by the delusion as to be acting under necessity and not as a free agent?

These groups of cases under the head of mania, with which we have been dealing, may be said to cover most of the debateable ground between the medical and legal camps. They comprise for the most part cases of "possession" of "irresistible impulse" and of "moral insanity"; but with regard to the latter a distinction must be drawn. The term "moral insanity" seems to be employed to designate two diverse phases of mental disorder (*l*)—one coming more naturally under the description of dementia than of mania; the one representing the degradation, the other the submergence of moral sense; the one is a sign of depravity or of decay, the other of disorganisation or of alien possession. Again, we have two apparently allied states of mental weakness or

(*k*) *McNaghten's Case*; Mercier, "Crim. Resp.," 170-72, 189; Harris, "Crim Law," 8th Ed., 17, Ch. IV.

(*l*) Mercier, "Crim. Resp.," 128, 131, 143, 197-203, 201; 120.

disorder in agoraphobia and claustrophobia (*m*). They are commonly associated with an obsession of "haunting fears"; yet, in the case of agoraphobia, it would appear as if the source of the disorder may be sought in nervous shyness rather than in overpowering fear; we may then perhaps class the former among nervous the latter among mental disorders.

The general conclusion then seems to be that, while the origin of all insanity is to be looked for in unhealthy hurtful or unsound conditions, we find in one group of cases palpable evidence of the disorder through impairment of the nerve functions of the brain, but in another group of cases we have to seek evidence of the disorder in disintegration of the faculties of the mind.

The question now again presents itself—is there any fixed standard of responsibility? This question has already been partly answered; but as it involves the further question of punishment or retribution, a little more consideration must be given to it. Punishment must be retributive: it ought to be reformative. There is no short cut across from the paths of wrong-doing to those of righteousness. One must go back a weary way to the point whence the paths diverged and set out anew on the right road; this is atonement, regeneration—"ye must be born again" (*n*). If this be so, if the only way of salvation be by way of atonement and regeneration, how

(*m*) Mercier, "Crim. Resp.," 139, 123, 143, 146, 148, 149, 151; Myers, "Human Personality," Vol. I, 41, 177, 465, 467, 476,

(*n*) St. John's Gospel, iii, 7.

insensate are our systems of condemnation and punishment for crime! Let us learn a lesson from the Great Atonement: the penalty of sin is death—it is even so by human law until the lesson of Christianity has been learnt: there was found no one in heaven or in earth who, paying the penalty of sin, could conquer sin and death but the suffering God alone. In organised society, offences against law and order were wont to carry the penalty of death, until the Christian State stepped in as saviour bearing in itself the penalty of wrong-doing and freeing the culprit when expiation has been made. That is the principle on which State punishments are meted out; but practical regenerative influences are sadly lacking.

The standard of responsibility must inevitably fluctuate according to the views which we take of the effects and aims of punishment (o): if the purposes and results of punishment be not atonement and regeneration, the tendency will be to find sources of irresponsibility in a never-increasing number of cases. But when we perceive how infinitely various are the ways in which the mind may be affected, and how imperceptible are the steps from sanity to insanity, we must see how little reason there is for the wide differences in the treatment of criminals according as they may be pronounced sane or insane. Breach of law is followed by catastrophe in either case: expiation is inevitable whether the culprit be sane or insane, responsible or irresponsible; for, breach of

(o) *Jurid. Rev.*, Vol. XVI, 254, 256, 258, 260, 261-2. Mercier, "Crim. Resp.," 151, 148, 190, 205, 206, 225.

law carries its own condemnation. But the very object of atonement is the regeneration of the offender—the State bearing the burden of his offence that he may go back on his steps and begin anew: why should the sane criminal not have every encouragement to reformation even as the insane criminal is given every opportunity for cure? Who can say that the mental disease or moral failing is not as entitled to curative or regenerative processes in the one case as in the other?

The treatment of the subject of legal responsibility would not be complete without some reference to the prevention and punishment of criminal offences. Few will be found to maintain that the existing Prison system, however admirably administered it may be, is well calculated for the reform of the criminal; and this ought to be the main object of Prison discipline. The first need is that the public conscience should be roused to a perception of common responsibility for the existence of crime in the midst of a civilised community, and then one may hope for greater advances being made towards discrimination in the treatment of prisoners. Except in cases of serious crime or of incorrigible offenders, the treatment should scarcely differ from that meted out to the insane; that is to say, the object of the treatment should be directed mainly towards reformation of character, and to this end each case should have separate consideration and appropriate treatment—utilising to the utmost extent the several aptitudes of the individual in mental and bodily training.



We have now reached the conclusion that, in the case of criminal responsibility alike with that of civil capacity, the ordinary rules of law may consistently be applied equally to the acts of the sane and of the insane.

Before proceeding, it may be well just to mention two other states of abnormality, besides that of lunacy, in which special questions affecting civil accountability or criminal responsibility may arise. Such questions may arise in respect of the qualifications that are attached by the common law or by legal enactment to the acts of women and of infants. From the point of view of this treatise on Responsibility, their outlook is more in the direction of legislation than of positive law: and they are grounded apparently more on considerations of expediency than of principle. In the study of comparative law, the subject will have general interest; but, in respect of Responsibility, we may confine our attention to one or two points in which the principles here discussed may be involved. There are certain circumstances, in the cases of women and children who are led to commit crime, when it may be difficult according to the ordinary rules of law to rebut the presumption of responsibility and yet where "policy or well-advised lenity" may find grounds of exemption—on presumptive evidence of coercion, absence of criminal intention, or otherwise (*p*). Take the case of infanticide under grievous conditions of desertion, or the case of a child under fourteen

(*p*) "Principles of the Criminal Law," Seymour F. Harris, B.C.L., Ch. IV, 8th Ed., pp. 16, 430.

years committing a crime of exceeding atrocity, it may be quite impossible to show according to the accepted notion of insanity as having its essential conditions in a diseased or defective brain that the woman or the child is irresponsible; yet the law, for the sake of humanity, may have to admit the presumption. The fact, that the natural love of the mother or the inherent innocence of childhood has suffered sudden occultation, is sufficient to lead one to suspect a disintegration of the ordinary consciousness, and the loss of inhibitory control,(q). The presumptions that the law makes then in certain cases, in favour of women and children charged with offences, seem to be apart from humanitarian motives founded upon a true psychology.

. (q) Sully, "The Human Mind," Vol. II, 247, 253, 259.

## VIII

THE object of loftiest endeavour is to reach the highest type in the development of mind (*r*)—a normal and proportional development of the several faculties. In such an endeavour alone is one truly sane. Is it true, then, "that the man of genius is for us the best type of the normal man (*s*)"? We may say, indeed, that that mind is normal, where the faculties are integrated by the spirit of the conscious self; abnormal, where disintegration has set in. The normal may be pitched high at the point of inspiration. When a nation is given over to folly, the only sane man is the prophet—the man inspired to a perception of the truth.

The Development of mental capacity is subject to natural laws of growth and to volitional processes of deliberation and choice (*t*). While it is true that minds in the course of their development display endless variety in point of force and capacity, yet a "common type of mental structure" may be seen to run through the particular orders or classes which go

(*r*) Sully, "The Human Mind," Vol. II, 299.

(*s*) Myers, "Hum. Per," Vol. I, 72.

(*t*) Sully, "The Human Mind," Vol. II, 296, 299, 302, 305; 263, 265.

to form a community (*u*). "Every degree of general superiority or inferiority of mind, and every special modification of mental configuration, arise from certain differences in the original psycho-physical constitution or in the life experience of the individual" (*x*). According to this view, "we may arrange men according to their place in the scale of mind or of cerebro-physical development" (*y*). Development of mind is thus conceived as indistinguishable from the development of brain in some unknown psychical capacity. The development of brain indeed has much to do with the exercise of mental power, but it has also much to do with the exercise of bodily strength. It leaves the problem of the origin of the mental faculties in relation to the three primary functions of the mind (*z*) still unaccounted for. The brain is but the medium of communication between the subjective and the objective, the self and the non-self, the inner world of thought and the outer world of sense. The soul is the life of the body: it is the brain that is the connecting link between soul and spirit—whereby the conscious soul comes into unison with the sub-conscious spirit, and the higher and lower faculties of man are united (*a*). By powers of observation and induction we are ever adding to our experience; by powers of assimilation

(*u*) Sully, "The Human Mind," Vol. II, 300.

(*x*) Ibid., 305; D. G. Ritchie, M.A., "Natural Rights," 246.

(*y*) Sully, "The Human Mind," Vol. II, 300.

(*z*) Ibid., Vol. I, 67, 59.

(*a*) Croom Robertson, "Philosophy," 208, 224; Bain, "Mental and Moral Science," App. 93.

and deduction, we are ever evolving rules and principles which are our guide through life (*b*). These rules and principles become the springs and guides of our action ; but many of our actions which had first of all resulted from thought and deliberation are repeated unconsciously as following out previous habit. We have thus action carried on consciously and sub-consciously (*c*). Habit may be contrasted with instinct : what may be done under the influence of habit in man may find its counterpart in the instinctive action of the lower animals ; but habits are formed under this double process of experimenting and reasoning. When, as the result of experimenting and reasoning, we have evolved rules and principles for our guidance, the tendency is immediately to put these rules and principles into practice in the formations of habits which under educational influences go to the formation of disposition and character. The tendency then among human beings is to avoid the necessity of consciously determining what each succeeding action shall be, by allowing habits of self-control "a fixed place in the mind as ruling forces. . . . Conduct is thus brought more fully under the sway of a general rule or maxim" without the consciousness of repeated mental effort (*d*). When habits have become formed, mental effort in so far ceases ; and the tendency in the generality of cases is for the course of action to

(*b*) Dr. T. Jay Hudson, "The Law of Mental Medicine," 23.

(*c*) Croom Robertson, "Psychology," 224, 227 ; Sully, "The Human Mind," Vol. II, 224, 280, 282, 284, 264, 265.

(*d*) Ibid., 281.

be guided by routine (*e*). It is a commonplace observation that men are accustomed to run in grooves; but it may not often be realised how prone men are to become creatures of mere routine. The tendency, earlier or later, of falling into the groove of routine is the criterion in a rough measure of individual mental capacity.

When the individual mind has arrived at this stage, it has reached the limits of its development—it can no longer benefit by education and, to avoid dissipation of energy, must be put into practical employment. There is the case, first of all, of the great bulk of humankind—in which an early development of mind shows small capacity for further advancement: it is the natural law of the mass which retains them at the routine of manual labour. There is then the case of a less numerous class whose mental capacity is greater and who reach a later development: they are capable of a higher education and of more intellectual employment and fall into routine in the ranks of those engaged in commercial and official business. There is finally a still less numerous class, to the full development of whose mental capacity advanced age in general alone sets limits: these, the quiet thinker or the large-brained man of action, are men of method rather than of routine; they are ever working out higher law, applying new principles, for the guidance of those around them—without whose light and leading a nation could not long be great. If this be a correct account of the orders of mental development,

(*e*) Sully, "The Human Mind," Vol. II, 228.

we are in presence here of a natural law of Progress, of upward and onward growth (*f*). These three orders may be seen to correspond with the habitual and effectual exercise of the bodily the intellectual and the spiritual powers respectively: so far as is apparent in the present state of man's advancement in the world, they are natural orders into which humankind is divided; and only by special gift and individual effort may progress be made from the lower into the higher.

The Law of Progress is the negation of the Socialistic dream; what becomes then of the cry for "equality of opportunity"? (*g*). Equality of opportunity, in the creed of the Socialist, is denial of the Law of Progress—the penalisation of all that dares to raise its head above a dead level of mediocrity: denial of equal opportunity is made by no one but by the Socialist himself.

Even a right thing may be done in a wrong way, and the result does not make for righteousness but for wrongfulness. It is a good thing to encourage the sons of "the workers" to come to Oxford (*h*). Now, how do the Socialists mean to meet endeavours in this way? They welcome a scheme of University Education; for, according to Mr. A. Henderson, M.P., "Labour was being called upon to take a larger share in public life, and Labour would be

(*f*) "Natural Rights," David G. Ritchie, M.A., 1895, pp. 111, 113, 281.

(*g*) Ibid., 258.

(*h*) "General Federation of Trades Unions": Meeting at Oxford; *The Oxford Times*, 11th July, 1908, p. 5.

judged by the public generally on the success or otherwise of its work: success would be assured if, in addition to the experience of the workshop, Labour were able to obtain the education of the University": but Mr. P. Curran, M.P., "doubted whether, without a change in the economic system, increased facilities for University education would bring much benefit to the working classes" (i). "But, if the real object of the Socialists is, as it seems to be, to capture the old colleges for 'the Workers' and carry out their experiments in them" (k), the scheme may be used as an aid to the political propaganda of Socialism, at the expense of education and culture.

The example of Ruskin College, the Labour College now in Oxford, may afford an indication of the lines on which the Socialistic reconstruction of the University would proceed, in the endeavour "to bring all private interests and private expectations into a proper subservience to the paramount interests of the Commonwealth" (l). The difference between Socialists and the defenders of the existing Social order is all the difference between the voice of reason—"raise up, replant, restore," and the fatalist cry of unreason—"level down, uproot, destroy."

As in the case of all great controversies that have agitated the human mind, the path of progress will

(i) "General Federation of Trades Unions": Meeting at Oxford; *The Oxford Times*, 11th July, 1908, p. 5.

(k) "Oxford Colleges and their Critics"; Articles from "a graduate," extracted from the *Daily Telegraph*; the *Oxford Times*, 11th July, 1908, p. 5.

(l) "Speech by the Rt. Hon. Winston Churchill, M.P., at Pontypool"; reported, 10th July, 1908.



not be found in the following out of either extreme : a strict adherence to extreme views on either side will not tend to regenerate Society. The lesson can only be learned in the growth of a proper sense of mutual responsibility for the common good, the responsibility of the State to the individual, the responsibility of the individual to the State (*m*). The State is accountable to the individual for the protection of private interests and for maintaining the rights of citizenship ; the individual is accountable to the State for a due exercise of these private interests in return for protection, and for an acceptance of a due share of public burdens in return for the rights of citizenship. If this be a correct statement of the mutual responsibilities which ought to subsist between the governing and governed in their several relations within a modern State, we may draw therefrom certain rules which ought to have the force of fundamental laws (*n*). In the first place, the State will not be justified in taking the property of the individual without full compensation, or in imposing exceptional burdens on any class or interest (*o*) ; and, in the second place, voting power should be withheld from those receiving State aid without contributory provision on their part, or from those who from ignorance or lack of education have not taken the pains to qualify themselves for its exercise (*p*).

(*m*) Holland, "Jurisprudence," Ch. IX, Classification of Rights ; Ritchie, "Natural Rights," pp. 78, 115, 276, 281, 286.

(*n*) Ibid., 115.

(*o*) Ibid., 266, 268, 269.

(*p*) Ibid., 255.

Societies like individuals may be possessed by the spirit of evil—obsessed by false ideals, driven into destructive courses. To attempt to build up a commonwealth for “the workers” on the ruin of the private interests of the higher orders of the community—to make such an attempt would simply tend to the physical and mental and moral deterioration of the race. If any people were ill-advised enough to make the experiment, the end would be only disillusionment and disgust—“such a Society may seem a satisfactory ideal . . . but it would prove unsatisfactory alike to the enthusiast for individual liberty and to the dogmatic believer in absolute equality” (q).

(q) Ritchie, “Natural Rights,” 258, 262, 269, 277, 280.

## IX

It will not seriously be questioned at the present day that man has a spiritual as well as a material origin—that he is constituted of a higher and a lower self (*r*). The higher self will correspond with his spiritual origin, the lower self with his animal origin; and the character of the man will depend on the nature of the control: when the spiritual and the material faculties work together in unison, the man is sane; when these respective faculties work no longer together in unison, when there is a divided personality in which the normal action of the spiritual upon the material is arrested or perverted, the man is no longer sane. The material part of man is endowed with life—has a soul (*anima*) in like manner as the lower animal creation; and, so far as we have any right to anticipate, this soul in conscious existence is intimately related to the life of the body—coming in with the first breath of life and going out with the last: the spiritual part of man is self-existent—an emanation from the Divine of a new self at conception; and, as we have every

(*r*) Sir Oliver Lodge, "The Substance of Faith," 77; F. W. H. Myers, "Human Personality," Vol. I, 14-15; Josiah Royce, D.Ph., "The Spirit of Modern Philosophy," 340, 372-380.

reason to believe, this spirit in sub-conscious existence is fitted to control soul and body during life and is freed at the moment of dissolution and survives (s). In these spiritual and material faculties, we are able to trace the several origins of the intuitional and the empirical, the rational and the experiential, qualities of the mind; we can discover the correspondence of the intuitional in man to the instinctive in the lower animals; and we can see how man, when bereft of his higher faculties, may be so "totally deprived of his understanding as not to know what he is doing, no more than . . . a brute or a wild beast" (t). The spirit is the true self; the soul and body are the manifestation (incarnation) of the spirit; but the spirit may be deposed from its seat and soul and body be possessed by alien influences—thus arises the phenomenon of a divided personality which may occur spontaneously under certain psychopathic conditions or be artificially induced in cases of hypnotisation (u).

The normal mind being thus constituted of supraliminal and subliminal faculties, functioning upon a primary basis of intellect feelings and will, the impairment or dispossession of either of these two faculties must inevitably react upon the three basal

(s) St. Matthew, xxvi. 38; St. Luke, xxiii. 46; Psalms, cxvi. 8, lvi. 13, xxxi. 5; Acts of the Apostles, vii. 59; Dr. T. Jay Hudson, "The Law of Mental Medicine," 23, 25-28, 83-92.

(t) *Arnold's Case*, Mr. Justice Tracey in his charge to the jury, took this view of such a madness "as is to be exempted from punishment," 16 State Trials (Howell), 765, 695-766.

(u) F. W. H. Myers, "Human Personality," Vol. I, 203-205, 173, 62, 217, 65; Vol. II, 192, 198.

functions; and we should expect accordingly that the impairment and the dispossession would show themselves indifferently—in the intellect by way of defect of reason, in the feelings through perversion of moral sense, and in the will from misdirected action. These various deflections from the normal may manifest themselves under various phases and in varying degrees; but, in all cases, we shall have to look for some sign of that impairment of the material or dispossession of the spiritual, which will arrest the harmonious action of the higher and lower faculties of the mind, before we shall arrive at a true criterion of responsibility. We may classify insane states for convenience sake under three main headings, and in each case we shall find that one or other of these criteria is a distinguishing feature (*v*). First, we find a certain order of cases, distinguished by arrested bodily and mental development, generally known as idiocy or imbecility (*w*). Secondly, we find a certain order of cases, easily distinguishable by physical disease or bodily and mental decay; these may conveniently be described under the general heading of dementia (*x*). Thirdly, we find a general order of cases, distinguishable by indications of spiritual disturbance in (a) deflected intellection (b) perverted feeling (c) misdirected will, to which the general term “mania” may be most aptly applied (*y*). The cases falling under the first and second orders

(*v*) Taylor, “Medical Jurisprudence,” 4th Ed., Vol. II, 484.

(*w*) Ibid., 502–504.

(*x*) Ibid., 501–502.

(*y*) Ibid., 484–493.

do not often present much difficulty on account of the marked pathological symptoms which attend these mental states. It is the third order of cases to which we have here to devote special attention on account of the difficulty that has been experienced, by the medical and legal professions alike, in finding a common test by which they may be marked off from cases of ordinary depravity.

The difficulty has arisen from not perceiving that insanity as an abnormal mental condition is owing to the inharmonious action of the higher and lower faculties, and that it may have its origin not only in the impairment of the lower, but in the dispossession or perversion of the higher. There is a moral and spiritual side to insanity as well as a physical and mental: it may originate by way of certain predisposing physical conditions; it may develop by a gradual weakening of moral control. The tragedies of life come through the cherishing of inordinate affections. The history of many cases of insanity is to be read in the growth of insistent ideas (2): here we come upon signs of a divided personality—the evil in the heart of man warring against the good; the evidence goes to prove that the character of the man has changed and the warring elements have become conspicuous. In such cases the evidence will show not the progress of a physical disease so much as the growth of morbid ideas acting upon a system weakened by nervous shock or suffering

(2) "Insanity of Doubt," by Philip Coombs Knapp, M.D.  
(*The American Journal of Psychology*, Vol. III, p. 1).

under hereditary taint. In this way the control of the true self may suffer eclipse.

The process of disintegration may have made considerable advance without having attracted much notice; but it may generally be traced back to some congenital weakness or inherited tendency or it may be to some actual cerebral lesion (*a*). In this view, the unifying power of the spirit over the organism has given way to instability and doubt, and "the persistence of an uncontrolled and unmodifiable group of thoughts or emotions . . . become alien and obtrusive, so that some special idea or image presses into consciousness with undue and painful frequency" (*b*) and thus arises the *fixed idea* and other phases of possession. When the disintegrating process has arrived at this stage, the personality is split up and the subject may come under the control of alien powers. It has already been shown how immeasurable is the spiritual power that resides in Faith. It includes the sum of knowledge and belief; "but it must also include all the spiritual energies of the human soul. To say the least, it must be the mental condition precedent to enable the soul to exercise any of its powers" (*c*). When Faith is lost, what is there to put in its place? When the soul is unmoved by faith, the organism becomes the

(*a*) Myers, "Human Personality," Vol. I, 39, 40.

(*b*) Ibid., 40; Philip Coombs Knapp, M.D., "Insanity of Doubt" (*The American Journal of Psychology*, Vol. III, January 1890, Art. I).

(*c*) T. Jay Hudson, D.Ph., "The Law of Mental Medicine," 18, 19.

creature of suggestion (*d*): when the spirit, the true self, has ceased to exercise its powers, suggestion from within or from without—self or alien—usurps its place. We may follow out the process artificially under the phenomena of hypnotism.

(*d*) T. Jay Hudson, D.Ph., "The Law of Mental Medicine," 23, 25, 26-27.



## X

LET us consider for a moment what takes place under hypnotism—what is the condition of the hypnotized subject, and how far hypnotic states may resemble certain phases of insanity.

We have already seen how power resides in the spirit of man through faith—trust in the unseen (*e*): “even now the organism of each man is passing and must pass increasingly under the control of his spirit . . . his spirit indraws from the metetherial environment an energy limited only by the intensity of its own appeal: in things physical as well as in things spiritual, ‘by grace we are saved through faith’” (*f*). When faith has given place to instability and doubt, the mind lies open (as has been seen) to insistent ideas—come from what source they may: the spirit having lost control, the organism lies a prey to alien influences—ready from the material or metetherial environment to enter into possession.

It will be instructive now to follow out one or two reported instances of deviation from the normal,

(*e*) Ep. to Hebrews, xi. 1.

(*f*) Myers, “Human Personality,” Vol. I, 155, 193, 119, 123, 215; Ep. to Ephesians, ii. 8.

and to notice how similar are the manifestations artificially induced in the hypnotised subject to those which we are familiar with in alleged cases of insanity—that perchance we may in hypnotic phenomena find an explanation of cases of possession and of the various forms of mania (*g*). We may observe in these hypnotic phenomena the control of an alien power, the sub-division of the self, the action of the organism even against the will of the complete self, self-hypnotisation—allowing one's self to become possessed, self-induced delusions (*h*). “The difference” between hypnotic phenomena and ordinary subliminal functioning, “is that what we have seen done spontaneously we now see done in response to our appeal” (*i*). A marked feature of the hypnotic state, in common with certain insane states, is liability to delusion—producible from self, or alien, suggestion (*k*). In either case the subject, having no faith to rest upon, is in a condition of almost complete receptivity to suggestion—of the operator in the one case and of the possessing influence or insistent course of ideas in the other: here we may have alternating states of consciousness, and the essential characteristic of one at least of the states of a divided personality is the invasion of an alien power.

This assumption may not meet with a ready assent; but the cases in mental pathology are very

(*g*) Myers, “Human Personality,” Vol. I, 168-169.

(*h*) Ibid., 444-450, (518*a*-522*b*).

(*i*) Ibid., 170.

(*k*) Ibid., 189, 447, 449.

numerous, to which no other hypothesis will afford a more satisfactory explanation. By way of illustration one may cite a couple of cases from the public prints. In the first of the two cases full particulars as published in the daily journal are given (*l*). "Lying on the grass in a walled-in garden, of which the door was locked, a girl of sixteen . . . was found unconscious and in night attire early on Sunday morning. A blanket, a pair of slippers, eye-glasses, and a skirt were found beside her, while she clasped a shilling in her hand. She was taken to a house and revived, being then driven to her home three miles away. She remembers absolutely nothing of how she came to be where she was found. She seemed to be in good health on the Saturday night, but was gone from her room when the maid went to call her in the morning. It appears that she walked no fewer than three miles while fast asleep. How she got out of the house is a mystery, as the door was found locked in the morning. She was very short-sighted, yet must in her sleep have climbed a wall which she would have found difficult to scale in the daytime, and in possession of every faculty. Her mind is a complete blank from the time she went to bed until she awoke to find herself in the house three miles away. 'In this girl's case,' a medical correspondent writes, 'the walking movements she went through are so commonplace that it would take a very slight brain impulse to start them. A vivid dream might have been a sufficient stimulus. The climbing of

(*l*) *Daily Mail*, Tuesday, 31st March, 1908: "Sleeper Walks Three miles," p. 5

the wall is a much more intricate act, demanding an accurate sense of touch and appreciation of distance; and this sort of act, like the recent case in which a sleep-walker shot his wife, is a mystery which brain specialists cannot elucidate.'” This case is instructive: the medical correspondent quoted admits that it cannot be explained on physiological nor apparently on psychological grounds—that, in fact, it and other cases of a like order are an unsolved mystery to brain specialists. The reason is not far to seek: the mystery lies deeper than what an inquiry into the functioning of the brain is ever likely to reach. What have we here? The motor-centres of the brain truly are active, but sensibility and consciousness are asleep; yet we have more to account for in this case (as the brain specialist admits) than mere brain action under the impulse of a dream. We may, however, have light thrown on the subject by comparing cases of spontaneous somnambulism with those artificially induced in hypnotism (*m*); and we may find that “the spontaneous sleep-waking state itself is manifestly akin to hypnosis” (*n*)—we shall find, in fact, “that the perceptive power within us precedes and is independent of the specialised sense-organs” (*o*). This should explain half the difficulty: it affords an adequate explanation of how the young lady was enabled to overcome all obstacles in her path, but

(*m*) Myers, “Human Personality,” Vol. I, 203, 59.

(*n*) Ibid., 203, 66.

(*o*) Ibid., 191; Hudson, “The Law of Mental Medicine,” 23, 29, 92.

it does not explain how her own personality came to direct her movements so as to play a trick upon her during cerebral unconsciousness. To take a step further—the organism may be subject to alternating states of consciousness: “somnambulism often *starts* as an exaggerated dream; it *develops* into a kind of secondary personality” (*p*). We have already seen how naturally, under certain morbid conditions, alternating phases of the personality may be developed. When the organism is out of gear in respect of the harmonious working of the physical and spiritual qualities of man, by reason mayhap of some mental or bodily derangement, the controlling power of the spirit is at stake. The natural result of such a state of things is a feeling of doubt or helplessness: doubt is that condition in which the human mind is peculiarly open to suggestion; even in sane states, the rapid transition from extreme nervousness to desperate determination is of frequent occurrence; and, in insane states, we have no reason to be surprised at a derangement arising in trouble weakness or doubt hardening into fixed and insistent ideas—as Dr. Knapp (already quoted) observes (*q*), in discussing certain opinions that had been advanced, “Here again I believe that too sharp a distinction has been made, as the *folie du doute* and *paranoia* evidently blend;” and, after some further observations, he cites a case showing “clearly

(*p*) Myers, “Human Personality,” Vol. I, 203; 40, 41, 46, 50, 53, 57, 59, 62, 65, 68.

(*q*) “Insanity of Doubt,” *American Journal of Psychology*, Vol. III, 15-18.

the mixture of insistent ideas and delusions, the combination between insanity of doubt and paranoia." To return now to the case of the young lady somnambulist, we have to account not only for the directing power of her unconscious movements, but also for the fact that these movements were carried out in opposition to one of the primitive and intuitively effective laws of our nature—that of self-conservation (*r*). If the spirit, the true self, were controlling these movements, one would expect them to have been carried out in conformity with this law; that the movements had not so been carried out raises the presumption that the control, if not absolutely hostile, was, at least, not intelligently and favourably disposed to the welfare of the organism. A reference to cases of induced somnambulism, in which the subject has put himself under the control of a hypnotist, will show how this may occur: we shall see, in fact, that "the spontaneous sleep-waking state itself is manifestly akin to hypnosis" (*s*). The strength of the spirit is in the *Faith* with which it inspires the waking intelligence: when there is a rupture of the personality, as in sleep-waking states spontaneous or induced, the organism lies open to suggestion which may crystallize into fixed or insistent idea; so that the organism enthralled to the ideas suggested is impelled to action, apart from knowledge and alien to conscious desires (*t*). In the integrate personality then the spirit, acting in

(*r*) Bain, "Mental and Moral Science," 79, 80.

(*s*) Myers, "Human Personality," Vol. I, 202, 203, 217.

(*t*) Ibid., 205-209, 536, 524, 211, 56.

conjunction with the soul, controls the organism (*u*) through faith; but when faith is weak, or when soul and body are unable to contend against distracting influences, "there may be a real break" in the personality. In the growth of insistent ideas "we have to do with an instability of the conscious threshold"; and, as "such changes are generally noxious," they may be regarded "as steps on the road—on one of the many roads—to mental overthrow" (*x*). We are now in a better position to complete our inquiry into the case of the young lady somnambulist. The whole of the circumstances are simply explainable on the hypothesis of insistent ideas acting on a lower stratum than that of the supraliminal or conscious self (*y*).

The second case will carry us a step farther, and will help us to complete our review of the situation. We have learnt from our inquiry so far, by comparing induced with spontaneous somnambulisms, that these present similar appearances, and are "sometimes actually interchangeable" (*z*); we have learnt further that what may begin "as an exaggerated dream" or insistent idea, may "develop into a kind of secondary personality," and that the subject is then in a state out of control of his ordinary conscious self, and comes easily under the influence of any dream-like self-suggestion, or into *rapport* with

(*u*) Myers, "Human Personality," Vol. I, 216-217, 61-62, 38, 39-41, 41-42, 42-43.

(*x*) Ibid., 42, 40.

(*y*) Ibid., 43.

(*z*) Ibid., 203, 209, 205-207.

some alien intelligence. "It has now been actually proved . . . that the hypnotic trance can be induced from a distance so great, and with precautions so complete, that telepathy or some similar super-normal influence is the only efficient cause which can be conceived" (a). It matters not whether it be by way of an insistent idea self-suggested, or by way of "effluence" from a hypnotiser, or by way of invasion from an extraneous source, the personality which has become thus disaggregated is "possessed" (b): "hypnotic trance has created for us . . . situations externally indistinguishable from what" may be regarded "as true possession" (c).

The second case, in illustration of disintegrated personality, is taken from an article by Mr. Harold Begbie "about insanity," published in the same journal (d) as the former case. Mr. Begbie, after lucidly remarking "It is not a diseased brain or a small brain that is responsible in every case for the teasing mystery of insanity: some shadowy cause, as invisible and as intangible as the electron of the chemist, is responsible for this tangle in the affairs of men; and only the law is bold enough to pin a label to the phenomenon"—relates a story told to him by one who had been "a charge attendant in one of the largest lunatic asylums in this country" for many years, and who had been so deeply affected by the spiritual mystery surrounding an incident

(a) Myers, "Human Personality," Vol. I, 207.

(b) Ibid., Vol. II, 192, 193, 198; Vol. I, 65.

(c) Ibid., Vol. II, 193.

(d) "What Science does not know," *Daily Mail*, Tuesday, 10th May, 1904.



which had happened to him on a certain day that the impression had never deserted him. The attendant had been going his rounds at midnight; all was silent but the sound of his feet on the stone corridors, and the muffled sighs and moans of the unfortunate paupers. "The attendant thought no more of those sounds than one thinks of the wind in the chimney or the groan of old furniture. But, as he approached one of the enormous wards, his thoughts did for a moment run on before him to a poor creature lying in that room to whom he knew kind death was now beating its way through time. Would he find the madman dead, or would he find him babbling in feverish dreams of things and sights and thoughts of which our sanity has no cognisance? He entered the long ward. . . . He began his solitary tour of inspection. Down the centre of the sleeping ward he went slowly and perfunctorily . . . looking at every huddled bed upon his right side before turning at the end to study those upon his left. . . . As he went forward he heard a noise upon his left a little behind him and, turning round, he beheld the poor dying lunatic rising out of bed. The sad and friendless madman . . . brought his feet slowly to the floor, and then stood up with white and strangely quiet face. The attendant thinking he was in delirium moved back to help him into bed. But, before he had taken a few paces, the dying lunatic, as though aware only of his own presence in the ward, kneeled solemnly down at the side of the bed buried his face in his hands and began to pray aloud." "The attendant tells me,"

continues Mr. Begbie, "that never before and never since did his ears listen to prayer so fervent, so wonderful, so sublime. . . . He asked for forgiveness, and he made supplication for help. From the side of his pauper bed, in the midst of those sleep-breathing madmen, the hushed and fervent voice of this hitherto dumb soul climbed sacredly to the Almighty, asking the Eternal to forgive him the sins of which he had been guilty and to bow down His Heaven and come and save him. There was no frenzy, no chaotic jumble of words, no aimless sentimentalism. As spirit to spirit, this once hopeless and dangerous lunatic prayed in that haunting scene for God's clemency and Heaven's help, as though the illusions of madness had rolled suddenly away and he was looking straight into the Holy of Holies and unafraid. . . . And; when the prayer was finished, the man rose up from his knees climbed into his bed laid his head upon the pillow and through the little wicket-gate of sleep presently entered the fields of eternity." Mr. Begbie adds that, since the publication of an article dealing with the problems of lunacy (*e*), there have been many other stories sent to him in which "there has been this same sudden sanity at the approach of death. . . . The problem in each case is the same—the sudden lull the sudden ray of light and then death" (*f*).

(*e*) Which the present writer has not seen.

(*f*) A similar case is reported quite recently from New York ("Mad Pastor's Fate," *Daily Telegraph*, London, 23rd June, 1908), in which the Rev. Valentine Strauss, pastor of the German Evangelical Church at Hermann, Missouri, "lately went mad,

Upon the facts in this and similar cases, for the existence of such cases can scarcely be disputed, several observations may be made. We observe a sudden return to sanity from an insane state—a divided or (it may be) an alternating personality: in the one case the spirit has lost control, the reason has temporarily vanished; in the other case the spirit has regained control and reason is restored. There has been dispossession and there is repossession: whether the dispossession has been effected by an alien power, or by insistent ideas self-suggested acting on an inferior and lower stratum of the self, the result is the same—it requires reunification of the entire personality to bring back light and reason (*g*).

and ever since has been roaming around the district with a gun, taking pot-shots at people from behind rocks and other cover." He was called to surrender and refused: he was shot down: "Mr. Strauss died, but before death his reason apparently returned; he confessed that he deserved his fate, and, with his head upon his wife's lap, he made the sign of the cross, freely forgiving his executioners who were deeply affected by the tragedy."

(*g*) Myers, "Human Personality," Vol. I, 42, 217; Vol. II, 190-191, 192.

## XI

WE are now in a better position to distinguish evidences of insanity from those of mere depravity. Frequently, of course, the one will shade into the other; but, it is always liable to be forgotten that the question that has to be decided in the Courts is not that of insanity but of responsibility. We have seen that evidences of insanity are to be found either in an impairment or in a disintegration of the mental faculties: in the former case, we have to seek for the physical accompaniments of cerebral defect disease or decay; in the latter case, we have to seek for the psychical accompaniments of disordered intellection feeling or action: it is the latter order of cases that are least easily distinguishable from cases of mere depravity. One has, first of all, in such an inquiry to look for evidences of that *change* in the thoughts and habits which is the general precursor of disaggregation; and, secondly, to seek out signs of a divided personality (*h*). The important thing to consider at this stage is not the extent of this derangement, but whether evidences of a cleavage in the personality does or does not exist (*i*).

(*h*) Myers, "Human Personality," Vol. I, 40, 57; 42, 59; 60, 61-63, 65.

(*i*) Meroier, "Criminal Responsibility," 138, 140.

We now proceed to apply these principles to a few of the cases that have come before the Courts in which insanity has been pleaded as a defence. One result, we trust, may be to sweep out of the way the last vestiges of a controversy over what has been called "Moral Insanity" (*k*). Moral Insanity may be said to exist, more or less, in every criminal act of a depraved type; and it affords no real distinction. What one has to ask, in such cases, is, "Is the man all there"—is there a cleavage of the personality: is the insistent idea deep down as in the subconscious somnambulist—is the possession complete as in the hypnotised subject? (*l*)

It is not necessary to select our cases: almost any reported case, where the evidence has been produced with care and discernment, will serve to illustrate on one side or the other the principles laid down.

The first case that we shall examine is that of *Reg. v. Townley* (1863) (*m*). The prisoner was tried for the very atrocious murder of Elizabeth Goodwin to whom he had been engaged and who had broken off the engagement. The Prosecution contended that the prisoner knew the nature and quality of the act and that it was prohibited. The Defence pleaded insanity. Verdict, guilty. Martin B., in charging the jury, said: "The jury must judge of the act by the prisoner's statements and by what he did at the time. Unless they were satisfied—and it was for the prisoner to make it out—that he did not

(*k*) Taylor, "Medical Jurisprudence," Vol. II, 477, 564-565.

(*l*) Myers, "Human Personality," Vol. I, 60; 196, 198, 209.

(*m*) 3 Fos. and Fin., 839-849.

know the consequences of his act, or that it was against the law of God and man and would subject him to punishment, he was guilty of murder. . . . The question for the jury was—was the prisoner insane, and did he do the act under a delusion believing it to be other than it was? If he knew what he was doing, and that it was likely to cause death and was contrary to the law of God and man and that the law directed that persons who did such acts should be punished, he was guilty of murder.” Under such a charge, it would be difficult to find a verdict of acquittal on the ground of insanity for any maniac who had committed murder. The main characteristic of such crimes is, that the maniac does know what he is doing but finds a delusive excuse for it, as did the prisoner. The evidence went to show a phenomenal state of depravity, and this with the judge’s charge no doubt weighed with the jury; but there is little doubt, from the evidence, that the murder was committed under a paroxysm of maniac frenzy. There was evidence of delusion; but, as this was of a common type, it was not paid much heed to. There was evidence of that “change” in the life and habits of the prisoner, which has been shown to be the usual precursor of dis-aggregation of faculty. Finally, the prisoner was reprieved: and he committed suicide in prison—raising the presumption that then at all events he was insane.

The next case that we shall quote is that of *Reg. v. Burton* (1863) (n). The chief interest of this

case lies in the plea of "moral insanity" having been set up by the defence and having failed. Counsel for the defence said, he desired to show a moral disease distinct from depravity. This was clearly the wrong course to take. Wightman, J. in charging the jury, cited the rule laid down by the Judges in the case of McNaghten and directed that "to apply this rule to the present case would be the duty of the jury. . . . Homicidal Mania . . . as described by the witnesses for the defence showed no delusion. It merely showed a morbid desire for blood. . . . The question for the jury was, whether the prisoner . . . was incapable of knowing that what he did was wrong." The prisoner, a youth of eighteen, had been indicted for the murder of a boy. At first, he pleaded guilty, but afterwards retracted his plea and pleaded not guilty. The murder seems to have been committed almost aimlessly. On giving himself up, the prisoner said, "I have made up my mind to tell the truth. . . . I knew the boy . . . but I had no particular ill-feeling against the boy, only I had made up my mind to murder somebody." There was a good deal of evidence to show a mental condition not far removed from imbecility. The prisoner's mother had been sent on two occasions to a lunatic asylum, and the prisoner's brother was of weak intellect. The surgeon, who had attended the family, declared that "all these aberrations had their origin in functional organic derangement of the brain, which could not always be detected even in dissection after death and which was necessarily matter of speculative opinion"; that he had on two

occasions attended the prisoner himself and, said witness, "I believe he is labouring under what, in the profession, would be considered as 'moral insanity'—that is, he knows perfectly well what he is doing, but has no control over himself." The police superintendent, who gave evidence, admitted in cross-examination that the prisoner had said "he was tired of his life"; but he was not quite certain whether the prisoner had said "he was determined to be hanged." The Defence—endeavouring to found a case of homicidal mania upon the plea of moral insanity—failed to satisfy the jury, and the prisoner was convicted. The Judge, commenting on this line of defence, described it as "a most dangerous doctrine . . . the question is whether such a theory is in accordance with law: the rule, as laid down by the Judges, is quite inconsistent with such a view; for it was, that a man was responsible for his actions if he knew the difference between right and wrong." The case is instructive: it shows how the Defence may err, in an undoubted case of mania, by grounding upon some general theory of moral or impulsive insanity when the proper course were to bring into relief specific facts of fixity of idea or delusion.

The next case that we shall review is that of *Reg. v. Law* (1862) (o). The prisoner, "a person of somewhat weak intellect," was indicted for the murder of her husband and of her infant child: she had been married for seven years and had had four children, of whom the child she had killed was the youngest—only a few months old. She had been



ill after her confinement and, for want of food and necessaries, had become to the last degree prostrated by physical weakness. Her husband had been prosecuted and sent to prison for a month for some trifling offence, during which time she had gone into the workhouse: while there she was attended by a doctor for a disorder which caused great loss of blood, leading to exhaustion of the brain mental weakness and the utmost nervous depression. "She at times talked wildly of having seen devils, a bright light, etc., and the doctor . . . and the chaplain . . . judged these to be signs of insanity. . . ." Such is the description given of this poor woman's state just before the commission of the acts with which she was charged. She returned home on the day of the expiry of her husband's sentence, having spent the day with her husband's parents; while there, they had been reading the Bible together and she said, in making remarks on Christ's temptation, that she had been tempted by the devil sometimes to cut her husband's throat or her own and should do so very likely some day. This case is instructive as showing in clear outline the whole range of disintegrating forces: we have, first, the predisposing cause—a weak intellect; then we have the physical and mental depression—the "change" in the condition of the subject; next we have the loss of confidence in herself, the insistent idea, and the state of being possessed; lastly, just before the commission of the fatal act, we have an apparently sane and reflective state in which the control of an insistent idea is consistently admitted. The prisoner returned home

that evening with her husband and early next morning she roused her mother, to tell her, that she had killed her husband with a chopper as he lay asleep and had afterwards killed the child. Upon this evidence, counsel for the prisoner was not called upon, and Erle, C.J., at once charged the jury. The learned judge put the usual question, whether in the opinion of the jury "the prisoner was in a state to know that she was doing what was wrong?" There was "morbid action of the brain"; there was "a state of disease . . . and other causes which might lead to insanity;" and there were "delusions of the senses which the medical men consider and might well consider symptoms of insanity." The learned judge then went on to say—"She seems to have fancied she saw and heard devils, even when no one was in the house alive but herself: if so, that was a delusion of such a nature as to indicate insanity. . . . It is for you to say whether, upon such evidence, you consider she was in such a state as to know the nature of her actions and to be aware that she was committing a crime." The jury at once found a verdict of *not guilty* on the ground of insanity.

No one probably will be found to quarrel over the correctness of this verdict. The evidences of insanity enumerated by the judge seem to have been sufficiently marked to carry conviction to the minds of the jury; but, even taken altogether, it is a little difficult to see how a lack of knowledge of right and wrong can be inferred from them, and yet that was the issue put to the jury by the judge. In the

majority of cases that come before the Criminal Courts in which insanity is pleaded as a defence, the "knowledge of right and wrong" test is in fact illusory: this knowledge is scarcely ever wholly wanting until the depths are reached, as in the case of Mr. Justice Tracey's madman (*p*). In many cases, the charge put in such terms is likely to present itself in the complexion of a judicial conundrum to which the judge alone is in a position to supply the answer. In the present case, there is the strongest presumption of the knowledge of right and wrong and of the nature of the crime that she was about to commit in the narrative of that afternoon's proceedings. When we look, however, to the signs of degeneration as manifested in the hospital, of the growth of a fixed idea, of the evil warring against the good, we need have little doubt that the poor woman was possessed and was not responsible for her actions.

There is a case which opportunely may come in here, as being one in which the knowledge test was appropriately applied. It is the case of *Reg. v. Davis* (1881) (*q*), tried before Mr. Justice Stephen. William Davis, 38, labourer, was charged with feloniously wounding his sister-in-law, Jane Davis, with intent to murder her. The prisoner (who had been drinking heavily but was then sober) made an attack upon Mrs. Davis threw her down and

(*p*) *Arnold's Case*, 16 Howell's State Trials, 695; *Hadfield's Case*, 27 State Trials, 1288, 1312; The Attorney-General quoting Coke and Hale.

(*q*) 14 Cox, Crim. Cases, 563-564.

attempted to cut her throat with a knife. Ordinarily, he was a very quiet peaceable well-behaved man, and on friendly terms with her. At the police-station he said—"The man in the moon told me to do it: I will have to commit murder, as I must be hanged." He was examined by two medical men, who found him suffering from *delirium tremens* resulting from over-indulgence in drink. According to their evidence, he would know what he was doing, but his actions would not be under his control. In their judgment, neither fear of punishment nor legal nor moral considerations would have deterred him—nothing short of actual physical restraint would have prevented him acting as he did: he was disordered in his senses, and would not be able to distinguish between moral right and wrong at the time he committed the act: under proper care and treatment he recovered in a week and was then perfectly sensible. For the defence it was submitted, that he was of unsound mind at the time of the commission of the act and was not responsible for his actions.

The broad issue here was, whether or not the prisoner at the time of the commission of the crime had been suffering from *delirium tremens* and whether this disease while it lasted was of such a nature as to relieve him of responsibility. That was the simple issue put to the jury by the learned judge, and the jury returned a verdict of not guilty on the ground of insanity.

Stephen, J., in addressing the jury in this case, was careful to distinguish between drunkenness and

the temporary disorder which might arise from drunkenness: "if you think (he said) there was a distinct disease, caused by drinking but differing from drunkenness, and that by reason thereof he did not know that the act was wrong, you will find a verdict of not guilty on the ground of insanity." The learned judge pointed out that "a person may be both insane and responsible for his actions; and the great test laid down in *McNaghten's Case* (r) was whether he did or did not know at the time that the act he was committing was wrong." It was not necessary to go further in this case; so the question, of "knowing what he was doing but his actions not being under his control", raised by the medical witnesses was properly passed over.

The most important lesson that one may learn from the case is this: that the "knowledge of right and wrong" test can be applied with advantage only in cases where brain disease is clearly capable of proof, and where that disease has made such ravages as to render the sufferer unable "to judge calmly and reasonably of the moral or legal character of a proposed action" (r). We have an instance of such cases in the one before us, where Mr. Justice Stephen was able to direct the minds of the jury clearly and simply to the points at issue. This is why cases of dementia or of imbecility are comparatively simple, because the question of knowledge may generally be gauged by the extent of the disease or of the degeneration. It is not so in cases of mania:

(r) Sir James Stephen, K.C.S.I., D.C.L., "General View of the Criminal Law of England," 2nd Ed., 79.

frequently there is no evidence of brain disease discernible; the attack may come on suddenly without any apparent cause—which nothing but an intimate and intelligent knowledge of the previous history of the patient could have discovered; and, in alternating states of sanity and insanity, the serious nature of the malady is often not recognised until the catastrophe has taken place—as in *Hadfield's Case* (s).

James Hadfield, a discharged soldier, owing to wounds received in the head in battle had become liable to acute attacks of mania; yet he went about his ordinary avocations without hindrance until he shot at the King George III on the 15th May, 1800. His counsel, Erskine, had said of him—"He was affected from the very beginning with that species of madness, which from violent agitation fills the mind with the most inconceivable imaginations, wholly unfitting it for all dealing with human affairs according to the sober estimate and standard of reason" (t): in other words, he should have been known to have lost control of his actions. The control of conduct and the knowledge of right and wrong are, according to Sir James Stephen (u), almost convertible propositions and may either of them be the test of responsibility according to their application. The difficulty is, however, to know how and when to apply these tests. It does not help matters very much, to say, "This power (of knowledge

(s) 27 State Trials, 1282-1355.

(t) *Ibid.*, 1321.

(u) "General View of the Criminal Law," 2nd Ed., 79-80.

and of control) may be disturbed by delusions or impulses of various kinds," unless you point out a method by which they may be shown to exist in a particular case. It is always open to the other side to say, "No, this is not a case of delusion or of uncontrollable impulse, but one of simple depravity,": to meet this, one must be prepared with a ready means of ascertaining whether these moral and impulsive insanities, which in their outward appearances are scarcely distinguishable from evil propensity, are to be held to have their origin in irresponsible action.

One might go on quoting cases, but like characteristics will be found to run through them all: one may find, on the one side, brain disease or decay (sometimes complicated with mania or delirium, *e.g. Reg. v. Richards* (1858), 1 Fost. and Fin., 87; and *Reg. v. Vyse* (1862), 2 Fost. and Fin., 247—in the one case, an old woman killing her husband; in the other a mother poisoning her children); and, on the other side, mental disorders or hereditary taint (where the decision has to be taken generally as between depravity and insanity, *e.g. Reg. v. Haynes* (1859), 1 Fost. and Fin., 666; *Reg. v. Oxford* (1840), 9 Car. and Payne, 525—in the former case there was a conviction; in the latter an acquittal on the ground of insanity). In the one set of cases, as a rule, there is not much room for differences of opinion: it is in the other set of cases that controversies have arisen over, so-called, Moral and Impulsive insanities. In these illustrations, the endeavour has been made to show that in every case

of insanity, whether it be of brain disease or of disordered feeling and action, the true test of responsibility is simply this—was the true self acting or only a part of the self: in the one case, had the brain through disease become a defective medium for the conveyance of mental impressions; in the other case, had the spirit so lost control that an insistent idea could be impressed on the organism? In order still further to illustrate this idea, we shall now very briefly review one or two cases that have come before the Scottish Courts.

The statement of the law, as practised in the Scottish Courts, differs very little from that to be met with under English law and practice. The grounds of exemption from criminal responsibility, where insanity is pleaded in defence are thus laid down in a Scottish text-book (*x*). “Insanity or Idiocy exempts from prosecution; but there must be an alienation of reason such as misleads the judgment, so that the person does not know ‘the nature or the quality of the act’ he is doing, or, ‘if he does know it that he does not know he is doing what is wrong.’ If this exist as connected with the act committed, he is not liable to punishment although otherwise rational. If he kill another when under an insane delusion as to the conduct and character of the person, *e.g.* believing that he is about to murder him or is an evil spirit, then it matters not that he has a general notion of right and wrong. . . . If there be insanity at the time and the person

(*x*) J. H. A. Macdonald, “Criminal Law of Scotland,” 3rd Ed, 10-12,



afterwards recovers, there is still no responsibility. Instances have occurred of one short access of maniacal frenzy, where there was no recurrence of the mania; such a case of insanity is the most difficult to prove, but if proved it bars punishment." "If alienation exist, it is of no consequence whether it result from a chronic or a temporary cause, nor although the cause have been the accused's own acts of excess; but mere intoxication is no defence." Such a statement of the law, even from an English point of view, leaves very little more to be desired: it has the advantage of adding clearness and precision to the statement of the rules of law as formulated by the Judges in the *McNaghten Case* (y). It would have been very well if left there: an intelligent application of the law as thus laid down would go far to cover any of the cases of debated responsibility which we are about to refer to. There is, however, a note of doubt and confusion in what follows. To continue the quotation (z)—"The alienation of reason must be substantial; oddness or eccentricity, however marked, or even weakness of mind, will not avail as a defence: even monomania may be insufficient, where the delusion and the crime committed have no connection, or where the person although having delusions was yet aware that what he did was wrong: disturbance to the mind is not enough, if the reason be not overthrown." Here the attempt is

(y) *Daniel McNaghten's Case* (1843), 10 Cl. and Fin. 200; Stephen, "General View of the Criminal Law of England," 80, 2nd Ed.

(z) Macdonald, "Criminal Law of Scotland," 3rd Ed., 12.

made, as in the rules prescribed by the English judges in 1843, to strike a common measure between two incommensurable quantities. In certain states of insanity truly, such as dementia delirium<sup>1</sup> or imbecility, we may meet with measurable correspondences which go far to fix a standard of responsibility; but, in the various phases of mania, we shall find no common measure between the reasonableness of the cleft self at one moment and its exhibition of vast wickedness at the next.

The first case that we shall refer to, from the annals of the Justiciary Court in Scotland, is that of *Alexr. Milne* (1863) (*a*), who was charged with the murder of James Patterson by stabbing. After evidence led for the prosecution, the defence produced a variety of exculpatory evidence going to prove the existence of insanity before at the time of and after the murder. One peculiarity of this case was, that apparently the prisoner was suspected of simulating madness, and that accordingly two of his fellow prisoners before trial were put into his cell to observe him. Their evidence, so far as can be gathered, seems only to confirm the genuineness of the symptoms of insanity; there was the wakeful condition of the maniac which cannot be simulated, seldom sleeping for more than three hours; there were persistent delusions; there were the characteristic phantasms of the insane—all this seems to have left little impression upon the jury. Three medical witnesses spoke to the existence of delusions: their impression was that the prisoner was not feigning

(a) 4 Irvine's Reports, 301.

madness. A point seems to have been made, that there was no connection traceable between the murder and the delusions. Now, one of the alleged delusions had been that a conspiracy had been hatched to poison him and to possess his wife; yet, the same medical witness, who "did not find any connection between" the two, admitted that he "thought the act of homicide was committed to get rid of the conspirator the poisoner and the seducer of his wife": that he "formed this opinion from what came out in the whole course of the conversation." The same witness was asked the question—"Is it not a possible condition of the mind in monomania that the patient might be well aware of the nature of the crime, and that he would suffer for it, and yet might feel irresistibly compelled to commit the crime?" The witness answered the question in the negative—the presiding judge having interposed, by saying, "If all the physicians in Europe were to state that, I would tell the jury that they must not believe it or act on it." The Lord Justice Clerk (Inglis) evidently was a robust disbeliever in anything he did not himself understand. From the evidence of friends who had known him for periods ranging from two to ten years, it appeared that the prisoner had been very strange in his demeanour for some years. Robert Moodie, who had known the prisoner for about ten years, deposed that he had lived in the same lodging with him before his marriage and had been his "best man"; that he was bankrupt in 1860; that there was a marked *change* in him after his bankruptcy—that he himself

“became frightened at him after his bankruptcy.” The witness, continuing—“On the evening of the publication of his bankruptcy I met him with a revolver . . . I took him home . . . I tried to console him about his bankruptcy; he said, ‘Oh, Moodie, I shall go mad.’” Other witnesses spoke of the prisoner’s delusions of robbers or poisoners of seeing spirits. John Smith, who had known prisoner for five or six years, deposed that prisoner had said to him that he knew he would be both robbed and murdered. The witness continued—“I tried to persuade the prisoner out of it, but did not succeed . . . On Wednesday morning [the day of the murder] . . . I got a message from the prisoner . . . asking me to go over to his shop and see him: I did not go, for I did not think it was safe to go near him.” The Lord Justice Clerk, after having gone over the evidence to the jury, said “The doctrine of criminal responsibility is exceedingly simple. If a person knows what he is doing—that is to say, if he knows the act that he is committing, if he knows also the true nature and quality of the act and apprehends and appreciates its consequence and affects—that man is responsible for what he does. If, from the operation of mental disease, he does not know what he is doing; or if, although he knows what is the act that he is performing, he cannot appreciate or understand either its nature or its quality its consequences or its effects; then he is not responsible.” Verdict of the majority, guilty; sentence of death, afterwards commuted to penal servitude for life.

What strikes one forcibly in reading the report of the evidence in this case is, that the whole case turns on the genuineness of the delusions. All the witnesses—medical as well as ordinary—testified to the presence of delusions, the most persistent of which was that he was being conspired against to be robbed and murdered, and that he had connected this in his mind with the deceased: it appeared that the trap laid for the prisoner while awaiting trial tended only to confirm the genuineness of these delusions; and yet they appear to have been paid very little attention to either by the judge or jury. If the jury had been directed to the reading of the rules of law, as laid down in the text-book of the Criminal Law of Scotland just quoted (*b*), they would have seen it there stated: "If (the person charged) kill another when under an insane delusion as to the conduct and character of the person, *e.g.* believing that he is about to murder him or is an evil spirit, then it matters not that he has a general notion of right and wrong." The manner of charging the jury in such cases, mostly in vogue since 1843 apparently in the Scottish equally with the English Courts, seems therefore not only to fail in directing the minds of the jury to the real issue of responsibility or irresponsibility but positively to divert them into a wrong channel. The crucial tests of irresponsibility in the case of an apparently duplex personality—of evil warring against the good, of states of depravity and of insanity almost indistinguishable the one from the other—have already been pointed out: we

(*b*) Macdonald, "Criminal Law of Scotland," 10-12.

have them here, all present, in this case of Alexander Milne. There is, first of all, the deep and lasting "change" spoken of by the most intimate friend of the prisoner; secondly, we have the state of doubt hardening into the insistent idea; and thirdly, we have "possession," the complete control of the organism in the carrying out of a suggestion—the fixed idea or delusion.

Another case that we shall refer to need not detain us long: like lessons are to be learned from it. It is that of *George Bryce* (1864) (c), who was tried for the murder of Jane Seaton, a domestic servant, by cutting her throat. The prisoner having pleaded not guilty, the facts were proved against him. Evidence was led for the defence, to show a certain low organisation almost amounting to imbecility—latterly, he had been given to drinking when he became furious; a year ago, a change seemed to come over him, he spoke thickly and unintelligently; he was deficient in memory, after the murder he did not seem to know that it had been committed. Two medical gentlemen testified to their belief in the prisoner's insanity. The attempt was made to show that he had committed the act under the influence of a delusion: the only evidence of delusion that could be produced was his belief in the fact of his victim having slandered him—"the only delusion proved was the delusion he was labouring under in believing that a man of the name of Peat had told him that Jane Seaton [the murdered girl] had said he was a drunken blackguard"—this was pronounced

by the medical witnesses to be a delusion. It is explained by the first medical witness in this way. "It is a very common delusion that one has been slandered . . . when a man broods over a fancied wrong, it becomes a delusion : it would produce a feeling of enmity and might lead to a fit of maniacal excitement under which he might cut his neighbour's throat."

This seems to be a begging of the whole question that has to be proved, namely, the existence of the delusion and the consequent mania. The Lord Justice General (Right Hon. Duncan McNeill), in charging the jury, pointed out that ". . . a man labouring under a mistaken belief respecting himself is not necessarily insane : a man believing that another has an ill-will towards him is not therefore insane, however ill-founded the notion may be . . . delusions of that kind are not such as will screen a person who on acting upon them has perpetrated a crime : if you choose to call that insanity, still it will not do : it is not an insanity of this kind that will be a defence against the consequences of such an act as this." The allegation, moreover, of the prisoner having had no recollection of what he did after the commission of the crime, is not substantiated : the prisoner, when pursued and taken, had remarked to the constable, "she is cheap of what she has gotten," and he asked if she was dead. The jury returned a verdict of guilty, with a recommendation to mercy on account of the low mental organization of the prisoner—in respect of which verdict the prisoner was sentenced to death.

The important thing to be learned from this case is, that again the Defence took the wrong course. The leading feature in the case is the mental deficiency of the prisoner; and the right course should have been to endeavour to show, if it were thought proper to plead insanity, that the degeneracy succeeding the changes marked by the medical witnesses had become so great that the prisoner was no longer able to distinguish between right and wrong; and, failing in this which was the only real issue, the Defence quite properly broke down.

The medical witnesses tried to prove too much. It was quite sufficient if they could have shown that the man, originally deficient of mental powers, had steadily degenerated until at least a twelvemonth ago he ought to have been taken care of in place of being allowed to wander at large: the evidence seems to have gone at least as far as this. They endeavour to support two distinct propositions regarding the insanity of the prisoner: in the words of the first medical witness, "I think he was labouring under a fit of maniacal excitement. . . . I consider that, about twelve months ago, he began to suffer a further change of a marked kind, which we term 'chronic dementia,' and which in similar cases has been observed to pass into complete dementia"; and, in the words of the second medical witness—"I do not think the prisoner was of sound mind at the time he committed the act in question; I think he was under a maniacal paroxysm. . . . The progressive indication afforded by his leaving his horse and cart, his gazing to the skies, his muttering to



himself, lead me to think that he was gradually becoming insane—the disease appeared to progress: from the evidence, and from what I have seen in my own examinations, I think that the case would gradually progress towards dementia.” Under cross-examination, the same witness stated—“Dementia is one of the three forms or divisions of insanity—mania monomania and dementia: I consider prisoner to be a monomaniac, and was so on the 16th April [day of the murder]. I think he became so about a year ago. I think that the subject of his monomania has always been the same—the same delusion, namely, the delusion that Jane Seaton had made certain statements regarding him and which apparently she never made. I am not aware of any other delusion—no proof of any others, though I suspect there were others. . . . Delusion is an essential of the monomania . . . the muttering to himself also indicates delusion [the witness had previously stated this to be a symptom of progress in dementia]. . . . There is no fact in the case to lead me as a medical man to the conclusion that his mind was not competent to understand the state of the circumstances. . . .” It is difficult to see why the Defence should have thus weighted their case all through by an endeavour to run dementia and monomania together: by imagining a condition of monomania—of which there was no proof, and by failing to show delusion, their case was lost. There was, however, abundance of proof of a progressive deterioration which, as the event showed, had reached a dangerous stage. The question arises—is there

anything to distinguish this case from one of sheer depravity: will any theory of irresistible impulse or moral insanity avail? Truly there are evidences of a *change* followed by degeneration, but this seems uniform and consistent; there is no struggling against the evil, no efforts at resistance; there may be a downward progress towards dementia, but there is no apparent split in the personality whereby a man is driven one way by insistent ideas when his true and better self would go another.

These instances may perhaps suffice to illustrate the working of the principle that has been laid down. One might stop here; but there is a case that may be mentioned, on account of the statement of the law contained in it, as coming from the lips of a high judicial authority. In the case of *Andrew Brown* (1866) (*d*), the Lord Justice Clerk (Inglis) in addressing the jury went on to say: "The main question for the jury to consider was . . . whether the prisoner was in such a state of insanity at the time as not to be responsible for the act which he had committed. . . . But, in order to constitute this insanity, it must be clearly made out that at the time of committing the act the prisoner was labouring under mental disease in the proper sense of the term and that the mental disease was the cause of the act. . . . Nothing but mental disease which overpowered the reason constituted insanity in the eye of the law." In this last qualification of

(*d*) 5 Irvine's Reports, 215-218. The report of the case sets out neither the prisoner's declaration nor any evidence for the defence.

"mental disease" lies all the difficulty: "mental disease which overpowered the reason," or "mental disease [which] was the cause of the act"—which is it to be? These two formal propositions have doubtless many times been taken to mean the same thing—that the one is but an explanation of the other; but they are very different. In the first place, "mental disease" must be taken to mean something more than brain disease: there may be mental disease, and yet no symptoms of brain disease: as has already been pointed out, this confusion of mental with brain disease has been one of the causes of misunderstanding. Then, in the second place, how can mental disease be properly said to be "the cause of the act"? The *will* is the cause of the act; the question therefore is—was the will free to act: if not, one has to inquire what prevented the freedom of the will—was it disease or lack of reason or some other disintegrating process?

The endeavour has been made throughout this treatise to show that precisely the same rules of law should apply in treating of the responsibility of the sane and of the insane; and that confusion and difficulty have arisen from the notion that some special rules should prevail in the trial of cases in which insanity has been pleaded. It is manifest that "such a defect of reason . . . as not to know the nature and quality of the act" (e) is an adequate test of responsibility, unless the will to do a crime follows upon a knowledge of the nature of the act

(e) *McNaghten's Case*: Answers of the Judges to questions I and III.

as an irrebuttable proposition. To see that this is not so, one has only to look into the meaning and effect of the presumptions of law affecting responsibility for the commission of offences (*f*). It is quite possible for a sane person, and it may be highly probable in the case of an insane person under certain conditions of insanity, to be so circumstanced that the person (notwithstanding the *dictum* of an eminent judge) (*g*) "might be well aware of the nature of a crime . . . and yet might feel irresistibly compelled to commit" it.

(*f*) Harris, "Principles of the Criminal Law": Presumptions.

(*g*) *Alex. Milne's Case*, see p. 127.

## XII

WHAT remedy then is there for these insanities? By what methods may they be countervailed: faith may effect cures on the body, but, when faith is not, what are we to do? There is no cross road from wrong-going to right-going; we must retrace our steps till we find the right road; where the suggestions have been evil let them be good; where fixed ideas have taken possession, they may be exorcised only by the stronger power of the reunited self (*h*): what is required is a reconstituted faith, as the sign of intensified spiritual life—the resumption of control by the true self. These mental distractions can be cured only by psychological methods: we want a true philosophy, a true religion. Man is a maker of religions: he is not satisfied with the simple one given to all mankind: a man is limited by his religion, by the faith that is in him—how necessary then that our religion, our philosophy, should be simple, should be true! Truth is hard to find; but, when found, it has ever these two characteristics—it tends towards unity, it tends towards simplicity.

There are two evolutionary forces ever acting on the development of man's character—the *realism*

(*h*) Myers, "Human Personality," Vol. I, 41-42, 219.

of his surroundings and the *idealism* of his philosophic and religious aspirations: the development of his nature, whether for good or evil, depends on the way the one force has acted and is acting on the other. It is a salutary thing for men to be dissatisfied with their lot, but the important thing is the quality of the ideal which they form for themselves as a working faith in the future. The responsibility for the formation of a true and high ideal lies at the door of every individual, even as it concerns the public safety and the very existence of the State. When that ideal is low—such as in the abject materialism of the Socialist—the descent may be sudden and profound; but, short of this, we see around us many false ideals each striving for the mastery. One is led thus to discern a distinct cleavage—running up and down throughout all the departments of human affairs—into two great sections of society as it at present exists: there is that section whose aim and ideal is mainly material in its tendency, and there is that other section whose aim and ideal is mainly spiritual in its tendency; and the contrast becomes very marked in the methods by which they are wont respectively to endeavour to attain their ends. There is an appreciative way of looking at things even as there is a descriptive; and these separate methods will correspond to the spiritual and to the material tendencies which are ever warring for the mastery. Only when the mutual realisation of inter-dependent interests “is assured does the moral life begin. . . . The world of appreciation is, then, the deeper reality: its rival,

the world of description, is the result of an essentially human and finite outlook" (i).

It seems apparent, then, that man in the formation of his character may follow either a higher or a lower bent; and the phenomena of sub-conscious and super-conscious states (k) would lead one to suppose that the conscious life of man is never wholly void of spiritual control, and that man may be inspired to what is evil and base as well as to what is good and noble. It seems scarcely doubtful that from this point of view alone can some of the phenomena of insanity meet with a satisfactory explanation.

Mind causes, is not caused. The mind of man must therefore be an emanation from the supreme mind (l); in this we have the guarantee of freedom of will: but when the mind of man is split up, and the spirit no longer holds control, freedom has given way to necessity and the creature is possessed. In respect of spiritual insight alone do we ever reach final truth: the lower faculties of the mind can but show us phases of the truth; by aid of which, and subject to the laws of physical causation, the natural man learns enough to serve his turn. We should expect then to reach ultimate truths by the appreciative rather than by the descriptive method.

. Let us examine for a moment two antagonistic

(i) Josiah Royce, "Spirit of Modern Philosophy," 386-396, 368, 375, 384, 390, 395, 397-404, 405-408, 409-415, 411, 412.

(k) Wm. James, LL.D., "Varieties of Religious Experience," 398, 511.

(l) Josiah Royce, "Spirit of Modern Philosophy," 340, 345, 348, 351, 409, 374, 380, 379-380, 460, etc.

systems in modern philosophy, of an idealism on the one hand and of a realism on the other, which may exemplify the working of the respective methods. The Evolutionist (*m*) is content "to look for a plan embodied in a physical sequence": he is convinced that "the absolute self simply does not *cause* the world"; that "the very idea of causation belongs to things of finite experience": in pleading ignorance of first causes, he affirms the principle of evolution, and is very "clear about the self." Here then are two absolutes—Evolution with a plan of its own, and an Absolute Self outside of that plan: how are we to reconcile them? If it can be established (*n*) "that an idealistic interpretation of the physical world" required "the theory of one absolute self as the truth embodied in both nature and mind," how are we to account "for the suggestion of plans" working independently under "the most rigid and necessary causal sequences of nature"; how are we to account for the fact that the physical world, in showing us a plan, "*expresses* a World Will, but is not subject to the interference of this will?" We have the answer—"The student of evolution finds the world mechanical . . . but he finds the world also teleological . . . and as the appreciable is deeper and truer than the describable . . . so the student of evolution, in thus viewing the world . . . of ideals that long for realisation, is coming nearer to the truth of things than is he who merely describes the necessary sequence of time." Although it is

(*m*) Josiah Royce, "Spirit of Modern Philosophy," 422-428, 423, 347-350, 348, 349.

(*n*) Ibid., 340, 368, 423, 348, 422, 426.



true that every interpretation of nature or of inner life is fragmentary and hypothetical, "it is nevertheless true that in both cases interpretation in appreciative terms is deeper than mere description of phenomena, and is more likely to get at the truth of things." It will not do, however, to say—"The real world must be a mind or else a group of minds." The physical universe is but a manifestation of mind; "for, as we now see, all describable truth is an outward symbol of an appreciable truth." The difference is all the difference between pantheism and monotheism.

There has been a recent essay in Philosophy <sup>(o)</sup> to elaborate the empirical method in the conduct of human affairs, at the expense of the rational, into a general principle of action. Pragmatism, by the simple process of arrogating for Empiricism what it derogates from Rationalism <sup>(p)</sup>, is able to create for itself a new philosophy which within its ample folds will gather up and deck out in modern finery all the infidelities of the ages. By aid of an application to the realities and idealities of life of the scientific method of observation and verification <sup>(q)</sup>, it affects to have found a theory or criterion of truth which will form a philosophic basis for the outpourings of present-day materialism. Under the midway doctrine of meliorism, we may cherish our own ideals—these ideals "are *live* possibilities"

(o) William James, "Pragmatism: a new name for some old ways of thinking," 1907.

(p) *Ibid.*, 9, 51, 251, 257, 258-270.

(q) *Ibid.*, 59, 200-202, 212, 246, 264; 256-259; 17, 69-81, 73, 78, 206-209, 215-217, 285-286, 287, 293, 293-301.

which have to wait for actuality upon "complementary conditions . . . such a mixture of things as will in the fulness of time give us a chance, a gap that we can spring into," and then by *our act* we find salvation (*r*).

"*Why not?* Our acts, our turning places . . . are the parts of the world to which we are closest, the parts of which our knowledge is the most intimate and complete . . . why may they not be the actual turning-places and growing-places, which they seem to be, of the world . . . so that nowhere may the world grow in any other kind of way than this? Irrational! we are told. . . . There must be a reason for our acts, where in the last resort can any reason be looked for save in the material pressure or the logical compulsion of the total nature of the world?" If Pragmatism be true then, we are the creatures of necessity—scarcely sane; for, in the last resort, can there be any reason for our acts save in the material pressure of our surroundings?

Having ascertained that "laws and languages at any rate are . . . man-made things" (*s*), Pragmatism "proposes the name of 'Humanism' for the doctrine that to an unascertainable extent our truths are man-made products too. . . . All our truths are beliefs about 'Reality.'" The Pragmatist cuts up Reality into three parts—first, into "the flux of our sensations"; secondly, into "the *relations* which obtain between our sensations or between their

(*r*) Professor James, "Pragmatism," 286-288.

(*s*) *Ibid.*, 242-251, 201, 212.

copies in our minds"; and, thirdly, into "the *previous truths* of which every new inquiry takes account." He then goes on to say—"Now, however fixed these elements of reality may be, we still have a certain freedom in our dealings with them. . . . Every hour brings its new percepts, its own facts of sensation and relation, to be truly taken account of; but the whole of our *past* dealings with such facts is already funded in the previous truths. It is therefore only the smallest and recentest fraction of the first two parts of reality that comes to us without the human touch; and that fraction has immediately to become humanised in the sense of being squared assimilated or in some way adapted to the humanised mass already there. As a matter of fact, we can hardly take in an impression at all in the absence of a preconception of what impressions there may possibly be." Truth, this man-made product of the Pragmatist, then turns out to be something of which Empiricism can take little account until it has become assimilated and adapted by "a preconception of what impressions there may possibly be," and without which "we can hardly take in an impression at all." We have here, then, in this "preconception" of the Pragmatist all that the Rationalist contends for—we have admittedly those elements of reason without which experience is impossible, that rational power which is the ultimate test of truth.

We may ask the question—whether either of these systems helps us to the realisation of a true and high ideal, which may serve as a guiding

principle on the path of progress? An Absolutist theory of the Universe and a Humanist theory of Evolution, under varying guises, seem to divide between them at the present day the field of speculation as formative principles in philosophy: can one put faith in either of these principles as an ultimate truth expressive of an ideal so simple so self-sufficing such as all men may strive after?

In the Absolutist theory, it is not very satisfactory to have to reconcile the existence of Evolution and a plan of its own with an Absolute Self outside of that plan, and to be told, that the physical world in showing us a plan "expresses a World Will but is not subject to the interference of this will." Again, we are not prepared for the statement that "the real world must be a mind or else a group of minds": the real world, whatever else it may be, must be a describable truth; and mind, whatever else it may be, must be an appreciable truth; but, "all describable truth is an outward symbol of an appreciable truth," so we may conclude that the real world can be not otherwise than a symbol or manifestation of the Absolute Self or supreme mind, and that an Evolutionary plan can exist not otherwise than as a manifestation of the Supreme Mind.

The Pragmatic or Humanist theory, on the other hand, rests upon the validity of Empiricism as opposed to Rationalism. It follows then that, if this basis of Empiricism as a criterion of truth can be shown to be illusory, the full fabric of materialism falls into fragments. When the Pragmatist comes to show forth Truth as a man-made product, it is

truth clothed in humanised garments : "All our truths are beliefs about 'Reality,'" and reality cuts up into three parts ; but it is "only the smallest and recentist fraction of the first two parts of reality that comes to us without the human touch, and that fraction has immediately to become . . . assimilated or in some way adapted to the humanised mass already there." Here, then, we have the image of a man-made truth in process of formation : it is the empirical method, and we ought to be content ; but still we want to know how this assimilation and adaptation takes place. That faction of reality which comes to us without the human touch—that is to say, without the aid either of our sensations and percepts or their relations—has to be assimilated and adapted to what is already there : and here it is admitted that "we can hardly take in an impression at all in the absence of" some further mental process—we must have "a preconception of what impressions there may possibly be" to enable us to take in an impression at all. It matters not by what name it is known, this "preconception" that is required for the assimilating and adapting process is fatal to the conception of a self-sufficient empiricism as the criterion of truth : and we may rest satisfied, on the unwilling testimony of the Pragmatist himself, that the Pragmatic method can lead one no further than to the perception of phenomena ; that is to say, it can afford us no more than a glimpse at phases of the truth. By a double process of experimenting and reasoning alone do we reach the truth, and the outcome of this is faith. If our faith be

centred on what is false, all our efforts will be misdirected. We cannot have faith in that which is not true without being so far insane ; to be deluded is to have trust in that which our faculties, if well ordered, should show us to be false. This was the principle misapplied by Festus when he said (*t*), "Paul, thou art beside thyself, much learning doth make thee mad." It was not St. Paul's learning but his faith which was in question.

If these criticisms be well founded, we have to ask—What then is truth, and how are we to find it ? By aid of all our faculties of body soul and spirit, exercised honestly earnestly and righteously, we have within the measure of our knowledge the capacity for arriving at the truth : men fall short of the truth when they are neither honest nor earnest nor righteous in the pursuit of it—it is not truth that such men desire, but only so much of it as will serve their turn. It is our predispositions and prejudices that stand in the way of the pursuit of truth ; our love for the truth must be such as to cast aside all that stands in the way—clear in heart and mind, reaching up through human knowledge to the word of God.

We must know ourselves before we can come to know God, in Whom is truth. Let man first know himself, the trinity in unity of spirit body and soul (*u*) ; then and not till then may he have a clear conception of the Deity. In presence of this illuminating thought, all things become plain ; man made

(*t*) Acts of the Apostles, xxvi. 24.

(*u*) Ep. of St. Paul to the Thessalonians, V. 23,

after the image of God, in His own likeness (*x*)—the Spirit the Word the Life, the Trinity in Unity of the Godhead: “and the Word was made flesh and dwelt among us . . . full of grace and truth” (*y*); “for in Him dwelleth all the fulness of the Godhead bodily” (*z*).

(*x*) Genesis, i. 26.

(*y*) St. John's Gospel, i. 14.

(*z*) St. Paul's Epistle to the Colossians, ii. 9.





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